THE

LAW OF COPYRIGHT,

IN WORKS OF LITERATURE AND ART:

INCLUDING THAT OF THE

DRAMA, MUSIC, ENGRAVING, SCULPTURE, PAINTING, PHOTOGRAPHY, AND DESIGNS.

TOGETHER WITH

INTERNATIONAL AND FOREIGN COPYRIGHT,

WITH THE STATUTES RELATING THERETO,

AND

REFERENCES TO THE ENGLISH AND AMERICAN DECISIONS.

BY

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"Non equidem hoc studeo, bullatis ut mihi nugis
Pagina turgescat, dare pondus idonea fumo."—*Pers.*

FOURTH EDITION.

BY

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THE LAW OF COPYRIGHT.

PREFACE TO THE FIRST EDITION.

THE decisions of our Courts of Law and Equity on the subject of Copyright during the last few years have been numerous; and so severely has been experienced the want of a work embodying these decisions, and presenting an exposition of the principles on which they have been determined, that little apology will be deemed necessary for introducing to the profession a digest of the Copyright Laws.

If I have, by the classification adopted, in any way facilitated the lawyer in his search for the principles of law as applicable to particular circumstances, and have proved of assistance to the literary man or the artist in the acquirement of that peculiar knowledge of the law which, for the due protection of his production is so requisite, I shall have attained an object at once gratifying to myself, and sufficiently compensative for my labour.

W. A. COPINGER.

MIDDLE TEMPLE LANE, TEMPLE.
September 1870.

PREFACE TO THE FOURTH EDITION.

PRESSURE of other work unfortunately prevented the author from writing this edition of his well-known work on copyright; but the editor, whilst assuming full responsibility for the alterations made by him, gratefully acknowledges the ready assistance which has been extended to him by the author, both during the preparation of the work for the press and in revising the proof-sheets.

Some slight alterations in arrangement have been made in this edition, and the increasing importance of international copyright and the judicial decisions since the last edition in 1893 have necessitated a practical re-writing of the portion of the work dealing with this branch of the law of copyright.

Every endeavour has been made to render the foreign law as complete and up to date as possible. This portion of the editor's task has been greatly facilitated by the aid derived from that invaluable organ of the Copyright Union—Le Droit d'Auteur—of which he has made free use.

J. M. EASTON.

40 SOUTH KING STREET, MANCHESTER.
September 1901.

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ADDENDUM

Pp. 466, 618. Sweden has now joined the Copyright Union. She has acceded to the Berne Convention of 1886 and the "Interpretative Clause" signed at Paris May 4, 1896, but, like the sister kingdom of Norway, she has not acceded to the Additional Act of Paris, 1896. The accession of Sweden takes effect from August 1, 1904.

THE LAW OF COPYRIGHT.

PART I.

LITERARY COPYRIGHT.

CHAPTER I.

HISTORICAL VIEW OF THE COPYRIGHT LAWS.

Definition and nature of copyright.

COPYRIGHT may be defined as the sole and exclusive liberty of printing or otherwise multiplying copies of an original work or composition (*a*).

The right of an author to the productions of his mental exertions may be classed among the species of property acquired by occupancy: being founded on labour and invention (*b*).

A literary composition, so long as it lies dormant in the author's mind, is absolutely in his own possession. Ideas drawn from external objects may be communicated by external signs, but words demonstrate the genuine operations of the intellect. The former are so identical with himself, that when by the author resolved into the latter, they lose not

(*a*) *Per* Pollock, C.B., *Chappell* v. *Purday* (1845), 14 M. & W. 316. The term "copyright" may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of the word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word. (*Per* Baron Parke, in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 920.) It is in the second sense of the word that copyright is defined by Davey, L. J., as "the right of multiplying copies of a published writing," *Walter* v. *Lane* (1900), A. C., at p. 550. In this case Halsbury, L.C., denied that originality is a condition precedent to obtaining protection under the Copyright Acts ((1900), A. C., at p. 548, and see *per* Davey, L. J., at p. 552): but there is probably a sense in which a work must be original. See chapter ii.

(*b*) Hoffman's 'Legal Outlines,' sect. iii.: Locke on Gov. pt. 2, c. 5.

CAP. I. their original characteristic; and whether or not they be regarded as of pecuniary value in the way of recital or sale, he ought to be the sole arbiter to authorize or to prohibit their publication, and have full control over them, before they are actually submitted to public inspection. In ancient times orations, plays, poems, and even philosophical discourses, were usually orally communicated, and all ages have allotted to the composers the profits which arose from this mode of publication. They were rewarded by the contributions of the audience or by the patronage of those illustrious persons in whose houses they recited their works. A recompense of some sort was regarded as a natural right, and any one contravening it was esteemed little better than a robber. Terence sold his 'Eunuchus' to the ædiles, and was afterwards charged with stealing his fable from Nævius and Plautus. "*Exclamat furem, non poetam, fabulam dedisse*" (*a*). He sold his 'Hecyra' to Roscius, the player. Statius would have starved had he not sold his tragedy of 'Agave' to Paris, another player:

"*Esurit, intactam Paridi nisi vendat Agaven*" (*b*).

These sales were founded upon natural justice. No man could possibly have a right to make a profit by the publication of the works of another, without the author's consent. It would be converting to one's own emolument the fruits of another's labour.

In later times the method of publication was usually by writing, or describing in characters those words in which an author had clothed his ideas. Characters are but the signs of words, and words the vehicle of sentiments. Here the value which distinguishes the writing arises merely from the matter it conveys. The sentiment is, therefore, the thing of value from which the profit must arise. No man has a right to give another's thoughts to the world, or to propagate their publication beyond the point to which the author has given consent. His reputation is concerned and he has a right to defend it. This is natural justice, and dictated by reason; consequently, as *Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria et contraria prohibet* (*c*), we may obviously assume that though

(*a*) *Prologus ad 'Eunuchum':*

Exclamat, furem, non poetam, fabulam
Dedisse, et nihil dedisse verborum tamen:
Colacem esse Nævi, et Plauti veterem fabulam,
Parasiti personam inde ablatam et militis."

(*b*) Juvenal, *Sat.* vii. 87

(*c*) Co. Lit. 319 b. Jenk. Cent. 117.

copyright, as *a species of property*, was in a strictly accurate sense unknown to, or at least was not by precedent established at common law, yet, "the novelty of the question did not bar it of the common law remedy and protection" (*a*).

Distinct properties were not adjusted at the same time and by one single act, but by successive degrees, according as either the condition of things or the number and genius of men seemed to require. When once established, the same law which pointed out and settled the line of demarcation commands the observance of everything that may be conducive to the end for which these various boundaries were erected. "*Nequaquam autem omnes res*," says Puffendorf (*b*), "*statim ab initio humani generis, aut ubique locorum ex definito aliquo præcepto juris naturalis debuerunt proprietatem subire: sed hæc est introducta, prout pax mortalium id requirere visa fuit.*"

Property in literary compositions.

The necessary consequence of being a distinguishable property was its having a determinate owner. As property must precede the violation of property, so the rights must be instituted before the remedies for their violation; and the seeking for the law of the right of property in the law of procedure relating to the remedies is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein. If the essential principle for one source of property be production, the mode of production is unimportant; the essential principle is applicable alike to the steam and gas appropriated in the nineteenth century, and the printing introduced in the fifteenth, and the farmers' produce of the earlier ages. The importance of the interest dependent on words advances with the advance of civilization. If the growth of the law be traced with respect to the words that make and unmake a simple contract, and with respect to the words that are actionable or justifiable as defamation, and with respect to the words that are indictable as seditious or blasphemous, it will be thought reasonable that there should be the same growth of the law in respect of the interest connected with the investment of capital in words. In the other matters the law has been adapted to the progress of society according to justice and convenience, and by analogy it should be the same for literary works, and they would become property with all its incidents, on the most elementary

(*a*) 4 Burr. 2345. *Nihil quod est contra rationem est licitum*: Co. Lit. 97 b. *Sou le ley done chose, la ceo done remedie a venir a ceo*: 2 Roll. R. 17. *In nova casu, novum remedium apponendum est*: 2 Inst. 3.

(*b*) *De Jure Nat. et Gen.* lib. iv. c. iv. s. 11. *Vide ibid.* s. 6.

CAP. I. principles of securing to industry its fruits and to capital its profits (*a*).

In the vast complications of human affairs, requiring new applications of old principles continually to be made; in the measureless range of human thought, bringing new doctrines out of the mass of new and old events; in the immense fields of human exploration, luminous with the light of every species of science, over which the race of man is always travelling; in the unlimited expansibility of human society, developing new aspects, new relations, new wants; in the fact that, although the reported decisions of the courts are numerically great, they embrace but comparatively few even of the questions which have arisen heretofore; in the known fact, also, that evermore the surges of time are driving the shore of human capability farther towards the infinite,—we read the truth, pervading every system of jurisprudence, that whenever a matter comes before the courts, it is really a call for a new enunciation of legal doctrines, and that from the past we only gather a few rules to guide us in the future. We learn that both the old and the new light point to the way of principle for the settlement of all new cases, when particular precedents fail (*b*).

What property could be more emphatically a man's own than his literary works? Is the property in any article or substance accruing to him by reason of his own mechanical labour denied him? Is the labour of his mind less arduous, less worthy of the protection of the law? When the right could not be combated on the ground of common sense or simple reason, the lawyers were forced to fly to what Lord Coke styles "*summa ratio*," or the *legal* reason, and they contended that from the very nature of literary productions no property in them could exist. For, said they, to claim a property in anything it is necessary that it should have certain qualities; it should be of a *corporeal substance*, be capable of occupancy or possession, it should have distinguishable proprietary marks, and be a subject of sole and exclusive enjoyment. Now, none of these indispensable characteristics were possessed by a literary production.

To this it was replied, that such definition of property was too narrow and confined; (for the rules attending property must ever keep pace with its increase and expansibility, and must be adapted to every particular condition;) that a distinguishable existence in the thing claimed as property, and an

(*a*) *Per* Mr. Justice Erle in *Jefferys* v. *Boosey* (1854). 4 H. L. C. 870.
(*b*) Bishop's 'Criminal Law.'

actual value in such thing to the true owner, are its essentials; and that the best rule of reason and justice seemed to be, to assign to everything capable of possession a legal and determinate owner.

No copyright in mere ideas.

Ideas, being neither capable of a visible possession nor of sustaining any one of the qualities or incidents of property, inasmuch as they have no bounds whatever, cannot be the subject of property. Their whole existence is in the mind alone; incapable of any other mode of acquisition or enjoyment than by mental possession or apprehension, safe and invulnerable from their own immateriality, no trespass can reach, no tort affect, no fraud or violence diminish or damage them (*a*). They are of a nature too unsubstantial, too evanescent, to be the subject of proprietary rights.

Copyright however in the material that has embodied the ideas.

When, however, any material has embodied those ideas, then the ideas, through that corporiety, can be recognized as a species of property by the common law. The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance. The order of each man's words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious by comparing the works of ancient authors with other works of their day: the vigour of the words is unabated, though other works have mostly perished (*b*). It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by action on the case, instead of detinue or trover (*c*).

Author's right to the first

"Ideas," says Mr. Justice Yates, "are free. But while the author confines them to his study, they are like birds in a

(*a*) Yates, J., in *Millar* v. *Taylor* (1769), 4 Burr. 2362; *Abernethy* v. *Hutchinson* (1825), 1 Hall & Tw. 28: S. C. in 3 L. J. (Ch.) (O. S.) 209, 213, 219: and see Sir G. Turner, V.-C., in *Morison* v. *Moat* (1851), 9 Hare, 257.

(*b*) The intellectual creations of the ancient Greeks and Romans have come to us through many centuries in better preservation than their great works of art: and while many of their stupendous monuments of stone and brass can no longer be distinguished, the identity of their intellectual labours remain unaffected by time.

(*c*) Mr. Justice Erle, in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 869.

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publication of his own manuscript.

cage, which none but he can have a right to let fly; for, till he thinks proper to emancipate them, they are under his own dominion. It is certain every man has a right to keep his own sentiments, if he pleases; he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state, the manuscript is, in every sense, his peculiar property: and no man can take it from him or make any use of it which he has not authorized, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication: and whoever deprives him of that priority is guilty of a manifest wrong, and the court have a right to stop it" (*a*).

Thus we see that every man has the right at common law to the first publication of his own manuscript, it cannot without his consent be even seized by his creditors as property (*b*). He has, in fact, supreme control over his own productions, and may either exclude others from their enjoyment, or may dispose of them as he pleases. He may limit the number of persons to whom they shall be imparted, and impose such restrictions as he pleases upon their use (*c*). He may annex conditions, and proceed to enforce them, and for their breach he may claim compensation (*d*).

Suppose, therefore, that a man, with or without leave to peruse a manuscript work, transcribes and publishes it, the offence would not be within the Copyright Acts; it would not be larceny, nor trespass, nor a crime indictable (the physical property of the author, the original manuscript, remains), but it would be a gross violation of a valuable right. Again,

(*a*) Yates, J., in *Millar* v. *Taylor* (1769), 4 Burr. 2378; *Forrester* v. *Walker* (1741), cited 2 Bro. P. C. 138; *Manley* v. *Owen* (1735), cited 4 Burr. 2329; *Webb* v. *Rose* (1732), 4 Burr. 2330; *Southey* v. *Sherwood* (1817), 2 Mer. 435; *Wheaton* v. *Peters* (1834), 8 Peters, S. C. R. (Amer.) 591; Eden on Injunc. 285; 2 Story, Eq. Jur. s. 943; Curtis on Copy. 81, 150, 159; *Woolsey* v. *Judd*, 4 Duer (Amer.) 385.

(*b*) See *Little* v. *Hall*, 18 How. (Amer.) 170; *Bartlett* v. *Crittenden* (1849); 4 McLean (Amer.) 300; S. C. 5 *ibid.* 32; *Webb* v. *Rose*, *supra*; *Pope* v. *Curl* (1741), 2 Atk. 342; *Manley* v. *Owen*, *supra*; *Macklin* v. *Richardson* (1770), Amb. 694; *Donaldson* v. *Becket* (1774), 4 Burr. 2408; *Abernethy* v. *Hutchinson* (1825), 1 Hall & Tw. 28; *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 652; 1 Mac & G. 25; *Turner* v. *Robinson* (1860), 10 Ir. Ch. 121, 510; *Wheaton* v. *Peters*, *supra*. See *Dudley* v. *Mayhew*, 3 Comst. (Amer.) 12; *Clayton* v. *Stone*, 2 Paine (Amer.) 383; *Jones* v. *Thorne*, 1 N. Y. Leg. Obs. 109; *Parton* v. *Prang*, 3 Cliff. (Amer.) 537; *Carter* v. *Bailey*, 64 Me. (Amer.) 458; *Bouricault* v. *Hood*, 16 Amer. Law Reg. 529; *Keene* v. *Wheatley*, 23 Law Rep. 140; *Roberts* v. *Dyer*, *ibid.* 396; *Stowe* v. *Thomas*, 2 Amer. Law Reg. 228; *Woolsey* v. *Judd*, *supra*; *Beckford* v. *Hood* (1798), 7 T. R. 620; 4 R. R. 527; *Palmer* v. *Dewitt* (1870), 23 L. T. N. S. 823.

(*c*) *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R. 173.

(*d*) *Exchange Telegraph Co.* v. *Central News* (1897), 2 Ch. 48; *Exchange Telegraph Co.* v. *Gregory & Co* (1896), 1 Q. B. 147.

suppose the original or a transcript be given or lent for a man to read, and he were to publish it, such publication would be a violation of the author's common law right to the copy (*a*).

Lord Clarendon's 'History.'

In the case of the *Duke of Queensberry* v. *Shebbeare* (*b*), an injunction was granted against the representatives of a person of the name of Gwynne, restraining them from printing the second part of Lord Clarendon's history, a copy of which had been lent to Gwynne, the Court being of opinion that Gwynne might make every use of it except the profit of multiplying in print. But where the plaintiff, as residuary legatee under the will of Miss Mitford, claimed to be entitled to an account against the defendant Bentley for the profits of the publication of the letters and papers of the testatrix, without the plaintiff's authority; and it appeared that after the date of her will, Miss Mitford had addressed an unattested letter to her executor, W. Harness, saying, that in case anybody should print her letters or life, she wished that a part at least of the produce should go to the plaintiff; and some years afterwards Harness arranged with one of the defendants to edit the said letters and papers, and requested him to pay £20 to the plaintiff, in compliance with Miss Mitford's wish, and the editor entered into an agreement with Bentley for the publication of a work containing the letters and papers which he had edited, and offered the plaintiff the sum of £20, which was not accepted, the Master of the Rolls held that the letter of Miss Mitford to Harness was tantamount to a gift to him of her letters and papers, and that on Bentley offering and undertaking to pay the plaintiff the sum of £20, before offered by the editor, the bill must be dismissed, but without costs (*c*).

(*a*) "The nature of a right of an author in his works is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copying after publication in print, which is the limited meaning of copyright in its common acceptation, and which is the right of an author, to which the statute of Anne relates. Thus, if after composition the author chooses to keep his writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication: he may require back the copies wrongfully made: he may sue for damages if any are sustained: also if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong, still the author's right to his composition would be recognised against the importer, and such sale would be stopped. . . . Again, if an author chooses to impart his manuscript to others without general publication, he has all the right for disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give, or sell any copy of his composition, with or without liberty to transcribe, and if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee. About the rights of the author before publication at common law, all are agreed." Erle, J., *Jeffreys* v. *Boosey* (1854), 4 H. L. C. 867: see *Barton* v. *Prang*, 3 Cliff. (Amer.) 518.

(*b*) (1758) 2 Eden, 329.

(*c*) *Sweetman* v. *Bentley*, W. N. (1871) 162.

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'Precedents of Conveyancing.'

'Love à la mode.'

The statutes do not affect right before publication.

Prince Albert's case.

In the case of *Webb* v. *Rose* (*a*) the plaintiff had his 'Precedents of Conveyancing' stolen out of his chambers and printed; and in the case of *Forrester* v. *Walker* (*b*) he had his notes copied by a clerk of a gentleman to whom he had lent them, and printed. In *Macklin* v. *Richardson* (*c*) the defendant had employed a short-hand writer to take down the farce of 'Love à la mode,' upon its performance at the theatre, and inserted one act in a magazine, giving notice that the second act would be published in the magazine of the following month. In all these cases the Court granted injunctions (*d*).

The statutes with reference to copyright do not in any manner affect the common law ownership of literary compositions before publication, and therefore until publication an author and his assignees have a proprietary right in his production, of which he is not deprived by the statute, and which the court will protect against invasion (*e*). The copyright laws are merely ancillary to the common law rights of authors (*f*). They continue such rights after publication in print, but in no way impair them, so long as the literary composition remains in manuscript, or is not printed.

These principles were clearly developed in Prince Albert's case (*g*), a case possessed of peculiar interest from the high position of the parties. It appeared that her late Majesty Queen Victoria and the plaintiff had occasionally, for their amusement, made drawings and etchings, being principally of subjects of private and domestic interest to themselves, and that they had made impressions of those etchings for their own use, and not for publication; that, for greater privacy, such impressions had been, for the most part, made by means of a private press kept for that purpose, and the plates themselves had been ordinarily kept by her Majesty under lock, and the impressions had been placed in some of the private apartments of her Majesty at Windsor, and in such apartments only; that the defendants Strange and Judge had in some manner obtained some of such impressions, which had been surreptitiously taken

(*a*) (1732) cited Ambl. 695.
(*b*) (1711) *ibid.*
(*c*) (1770) Ambl. 694.

(*d*) See also *Turner* v. *Robinson* (1860). 10 Ir. Ch. Rep. 121, 510: *Southey* v. *Sherwood* (1817). 2 Mer. 135: *Gee* v. *Pritchard* (1818). 2 Swans. 402: 19 R. R. 86.

(*e*) *Palmer* v. *Dewitt* (American case) (1870) 23 L. T. 823: *Exchange Telegraph Co.* v. *Gregory* (1895). 1 Q. B. 147: *Press Publishing Co.* v. *Monroe*, 38 U. S. App. 110 (2nd Cir.): *Jewellers' Mercantile Agency* v. *Jewellers' Weekly Publishing Co.* (1898), 155 N. Y. Rep. (Amer.) 241.

(*f*) Mr. Edward Jenkins, M.P., in his separate report as a member of the copyright commission, says, "The statute law *creates*, it does not *recognise*, copyright." but it is conceived that this is a position which could not be supported.

(*g*) *Prince Albert* v. *Strange* (1849). 1 Hall & Tw. 1: 1 Mac. & Gor. 25, 18 L. J. (N. S.) Ch. 120: 13 Jur. 15, 109, 307.

from some of such plates, and had thereby been enabled to form, and had formed, a gallery or collection of such etchings, of which they intended to make a public exhibition without the permission of her Majesty and the plaintiff, or either of them, and against their will; that the defendants had compiled and prepared a work, which had been printed and published by the defendant Strange, of which the title-page or cover was as follows:—'A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings.' "Every purchaser of this catalogue will be presented (by permission) with a facsimile of the autograph of either her Majesty or of the Prince Consort engraved from the original, the selection being left to the purchaser, price sixpence:" that this work had been compiled, printed, and published without the consent of her Majesty and the plaintiff, or either of them, and against their will; that, in fact, among the etchings were portraits of the plaintiff, the Prince of Wales, the Princess Royal, and other members of the Royal Family, and personal friends of her Majesty, from life, and afterwards transferred to copper and etched by her Majesty and the plaintiff, and among such etchings were portraits of their favourite dogs, taken by them from life, and etchings from old and rare engravings in the possession of her Majesty, and several from such original designs as in the catalogue mentioned; and among such etchings there were several portraits of the Princess Royal, and such scenes in the Royal nursery as in the said catalogue mentioned: and that the said descriptive catalogue comprised sixty-three several etchings; that the catalogue could not have been made except from impressions surreptitiously obtained; that the impressions were intended for private use, and not for publication, and very few had been given away, and those only to private friends. The bill then, as amended, charged that certain of the plates were given to Brown, a printer, at Windsor, for the purpose of printing off certain impressions thereof for her Majesty and the plaintiff, and that Brown employed therein a person of the name of Middleton, who, without Brown's consent or knowledge, and in violation of the confidence reposed in him, took impressions thereof for himself; and that Judge had bought or in some manner obtained the same from Middleton. It was then prayed that the defendants might be ordered to deliver up to the plaintiff all impressions and copies of the several etchings respectively made by the plaintiff; and that they, their servants, &c., might be restrained by injunction from exhibiting the said gallery or collection of etchings, or from

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making engravings or copies of them, or in any manner publishing them, or from parting with or disposing of them, and also from selling, publishing, or printing, the descriptive catalogue in the bill mentioned or any work being or purporting to be a catalogue of the said etchings, and that the copies of the catalogue in the possession of the defendants might be given up to the plaintiff. An injunction was immediately granted against Strange until he had answered the bill, or the court should make order to the contrary, which injunction was afterwards extended to the other defendants. Strange subsequently put in an answer denying that he had in any manner, either surreptitiously or otherwise, obtained any impressions of the etchings or copies of them. He stated that he believed that Judge purchased certain impressions of the etchings from Middleton; that Judge had proposed to him to exhibit them if her Majesty and the Prince did not object; and that he then believed that the impressions had not been improperly obtained; that Judge afterwards wrote the catalogue, which Strange printed, but struck off fifty-one copies only, and then broke up the type; that this catalogue had never been exposed for sale, and that as soon as he learnt that the exhibition was disapproved of by the Queen and the Prince, he determined to abandon the scheme, and had offered to give up all copies of the catalogue in his possession if the bill were dismissed against him and his costs paid, but that the solicitor for the plaintiff refused to pay the defendant's costs. He insisted by his answer that, as a matter of strict right, he was entitled to publish the catalogue; and so far as the injunction related to the publication of the catalogue he moved to dissolve it before Vice-Chancellor Knight Bruce. It was contended by the defendants that a man acquiring knowledge of another man's property without his consent, is not by any rule or principle which a Court of Justice can apply—however secretly that other man may have kept or endeavour to keep his property—forbidden, without consent, to communicate or publish that knowledge to the world, to inform the world what the property is, or to describe it publicly, whether orally or in print or writing. That there were distinct properties, independent of each other, in the owner of portraits; first, there was the right of property in the canvas; secondly, in the face that adorned the canvas; thirdly, the knowledge of the existence of what he possessed. That supposing that the owner of a collection of pictures allowed the public on certain days to view his collection, and by this means one of the visitors acquired a knowledge of the

paintings, the same as the owner, that such person had in the absence of contract to the contrary a right to make use of that knowledge. It was admitted that he might be restrained from using the form, but contended that he could not be restrained from describing the attributes created by the form. That there was no greater right of property in the knowledge, in the owner of the collection, than in any stranger who might have had access to them. But both the Vice-Chancellor Knight Bruce in the first instance, and Lord Cottenham on appeal, refused to give affect to this argument. The former saying (*a*), "The author of the manuscripts, whether he is famous or obscure, high or low, has a right to say of them, whether light or heavy, saleable or unsaleable, that they shall not, without his consent, be published; and I think to use a dishonest knowledge of them, for the purpose of composing and publishing, and so to compose and publish a catalogue of them, amounts to a publication of them within the principle and the rule. Assuming the law to be so, what is its foundation in this respect? It has not reference to any considerations peculiarly literary. Those with whom our common law originated had not, probably, among their many merits, that of being patrons of letters, but they knew the duty and necessity of protecting property, and, with that general object, laid down rules providently expansive—rules capable of adapting themselves to the various forms and modes of property that peace or cultivation might discover or introduce. The produce of mental labour, thoughts, and sentiments recorded and preserved by writing, became, as knowledge went onwards and the culture of man's understanding advanced, a kind of property which it was impossible to disregard. . . . Upon the principle, therefore, of protecting property, it is that the common law, in cases not aided nor prejudiced by the statute, shelters the privacy of thoughts and sentiments committed to writing, designed by the author to remain not generally known. This has been, in effect, judicially declared, not by any judge more distinctly than by Lord Eldon, on several occasions, particularly in Mr. Southey's case. He says, 'It is to protect the exclusive property of the writer that injunctions are granted.' And again: 'I have examined the cases I have been able to meet with containing precedents for injunctions, and I find that they all proceed upon the ground of title to property in the plaintiff.' Such being, as I believe, the nature and foundation of the common law as to manuscripts, independently of Parliamentary additions and subtractions, its

(*a*) 13 Jur. 57.

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operation cannot, of necessity, be confined to literary subjects; that would be to limit the rule by the example. Wherever the produce of labour is liable to invasion in an analogous manner, there must be, I suppose, a title to analogous protection or redress. Such I consider the case of mechanical works or works of art executed by a man for his private use. Whatever protection those, or some of those, may have by the Act of Parliament, they are not, I apprehend, deserted by the common law. The principles and rules which it applies to literary compositions and manuscripts must, to a considerable extent, be applicable to these also." And the latter, assuming the right of property, says (*a*): "If, then, such right and property exist in the author of such works, it must so exist exclusively of all other persons. Can any stranger have any right or title to, or interest in, that which belongs exclusively to another?—and yet this is precisely what the defendant claims, although, by a strange inconsistency, he does not dispute the general proposition as to the plaintiff's right and property; for he contends that, admitting the plaintiff's right and property in the etchings in question, and, as incident to it, the right to prevent publication or exhibition of copies of them, yet he insists that some persons having had access to certain copies, and having, from such copies, composed a description and list of the originals, he, the defendant, is entitled to publish such list and description —that is, that he is entitled, against the will of the owner, to make such use of his exclusive property. It being admitted that the defendant could not publish a copy—that is, an impression—of the etchings, how, in principle, does the case of a catalogue, list, or description differ? A copy or impression of the etchings could only be a means of communicating knowledge and information of the original; and does not a list and description do the same? The means are different, but the object and effect are similar: it is to make known to the public, more or less, the unpublished works and compositions of the author, which he is entitled to keep wholly for his private use and pleasure, and to withhold altogether, or so far as he may please, from the knowledge of others. Cases of abridgments, translations, extracts, and criticisms of published works have no reference whatever to the present question. They all depend on the extent and right under the Acts with respect to copyright, and have no analogy to the exclusive right of the author in unpublished compositions, which depend entirely on the common law right of property. . . . Upon the

(*a*) 13 Jur. 112.

first question, therefore—that of property—I am clearly of opinion that the exclusive right and interest of the plaintiffs in the compositions and works in question being established, and there being no right or interest whatever in the defendant, the plaintiff is entitled to the injunction of this Court to protect him against the invasion of such right and interest by the defendant, which the publication of any catalogue would undoubtedly be."

Publication in breach of confidence.

The Courts frequently restrain the publication of unpublished matter on the ground of breach of confidence or of an implied contract. If a person lends his manuscript to another there will generally be implied a contract that the latter shall not publish it (*a*). A servant may not publish information which he has been employed to obtain for his master (*b*), nor use for his own purposes copies of documents belonging to his master (*c*), for to do so would be a breach of the confidence reposed in him. A pupil reading in a barrister's chambers may be allowed to take copies of precedents for his own use, but not for publication (*d*). In the case of *Gilbert* v. *Star Newspaper Co.* (*e*), Mr. W. S. Gilbert obtained an *ex parte* injunction restraining the publication of the plot of his play, 'His Excellency,' then being rehearsed, but not yet publicly performed, on the ground that the defendants had obtained their information with the knowledge that it was given them in breach of confidence. Nevertheless, a common law right to copyright in unpublished matter undoubtedly exists.

What amounts to publication at common law.

What amounts to publication sufficient to defeat the common law right is a question of some nicety. The property which a composer of a piece of music ordinarily has in his composition is the pecuniary value which it has to him, and not merely the amount of fame he may acquire; and such pecuniary value is necessarily and wholly dependent upon the means which he may lawfully employ to bring his production before the public, and the approval of the public of his work; and there is no other property in that description of literary composition.

"When a right of property in the invention or creation of

(*a*) *Duke of Queensberry* v. *Shebbeare* (1758). 2 Eden. 329; and see as to letters, chap. ii. post.

(*b*) *Lamb* v. *Evans* (1893). 1 Ch. 218; *Merryweather* v. *Moore* (1892), 2 Ch. 518; *Robb* v. *Green* (1895). 2 Q. B. 315.

(*c*) *Louis* v. *Smellie* (1895), W. N. 115; 11 Times L. R. 515; *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

(*d*) *Abernethy* v. *Hutchinson* (1825). 3 L. J. (O. S.) (Ch.) 209; *Lamb* v. *Evans* (1893). 1 Ch. 218, 231.

(*e*) (1894) 11 Times L. R. 515, cf. *Exchange Telegraph Co.* v. *Central News* (1897). 2 Ch. 48.

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an author is recognised as an inherent right by the common law," says Mr. Judge Monell in an American case (*a*), "it assumes that the thing to be secured and protected is of value to the owner. The law does not regard as property a thing entirely worthless. If a literary composition, therefore, derives its value from, and becomes property because of, the use which can be made of it before the public, and such value is increased or diminished in proportion to the extent of its use, then it becomes very important to know where and when the author's literary property in it terminates. To give it value, or to make it property, recognised by the common law, the author must be allowed to use it before the public; and if, having submitted it once to a public hearing, it is to be deemed a publication, so as to take away the proprietary right, and to deprive the author of the benefit of copyright laws, then, obviously, the common law means nothing, and there is no such thing as property in literary work. Can it be said that once delivering a lecture upon a scientific or literary subject, before a public audience, will for ever thereafter deprive the author of his property in the ideas invented or created, and which represent, by a combination of words his meaning? If so, then any one who can obtain the manuscript, or access to it, or who, by employing the art of stenography, or by the exercise of memory, can carry it out of a public lecture-room, may, without the consent or knowledge of the author, appropriate and use, for his own emolument, the literary production of another person. I cannot believe there is so little foundation for, or so narrow a limit to, the proprietory rights of an author in his literary labours. I believe the law intended to secure to him the *beneficial* results of his labours, and to protect him from any piratical invasion of his rights, until he has done some act inconsistent with an exclusive ownership, and which shall amount, in judgment of law, to a publication. There can be no fixed rule determining when an author has surrendered his literary property."

What does not amount to publication.

The publication of a work for private purposes and private circulation is not a publication sufficient to defeat the common law right of an author (*b*). Accordingly, it has been determined that a copyright in a piece of music is not lost, although

(*a*) *Palmer* v. *Dewitt* (1870), 23 L. T. 823, 325.

(*b*) *White* v. *Geroch* (1819), 1 Chitt. 24, 2 B. & Ald. 298, 22 R. R. 786: *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 686: 1 Mac. & Gor. 42: 1 Hall & Tw. 1: *Jefferys* v. *Boosey* (1851), 4 H. L. C. 816. Publication as a serial in a periodical is equivalent to publication in book form, *Holmes* v. *Hurst* (1898), 174 U. S. Rep. 82: *Mifflin* v. *R. H. White & Co.* (1902), 190 U. S. Rep. 260: *Mifflin* v. *Dutton ib.* 265.

it had been published in manuscript a year before being printed. The words "printed and published," used in the statutes, have reference only to the time at which the author's exercise of the right is to be dated; and therefore, the circumstance of an author having previously published in manuscript any composition which is afterwards printed, only varies the period of time from which the term of protection is to be calculated. The delivery of a lecture to an audience of persons admitted on payment of a fee, is not deemed a publication (*a*); neither is the exhibition of a picture at a public exhibition or gallery, where copying is expressly or impliedly forbidden, nor the exhibition of a picture for the purpose of obtaining subscribers to an engraving (*b*).

The effect of publication.

On publication, no more passes to the public than an unlimited use of every advantage that the purchaser can reap from the doctrines and sentiments which the work contains. The property in the composition does not pass; for those things which are peculiarly and appropriately the author's, must remain his until he agrees or consents to part with them by compact or donation; because no man can deprive him of them without his approbation; but the depriver must use them as his when they are not his, in contradiction to truth. For "to have the property" in any thing, and "to have the sole right of using and disposing of it," is the same thing. They are equipollent expressions (*c*).

Primary recognition of copyright.

It was only since the introduction of printing that any question of the extent and duration of copyright could be expected to occur in a court of justice. For the period of about a century from the time of this introduction we have no evidence of the recognition in any public form of the copyright of authors, or of the remedies by which its infraction might be redressed (*d*). The earliest evidence which occurs is to be found in the charter of the Stationers' Company and the decrees of the Star Chamber.

The original charter of the Stationers' Company.

The original charter of the Stationers' Company was granted by Philip and Mary in 1556. It was the declared object of the Crown at that time to prevent the propagation of the reformed religion, and it seems to have been thought that this could most effectually be brought about by imposing the

(*a*) *Abernethy* v. *Hutchinson* (1825). 3 L. J. (O. S.) (Ch.) 209: 1 H. & T. 28; *Nicols* v. *Pitman* (1884). 26 Ch. Div. 374: *Caird* v. *Sime* (1887). 12 App. Cas. 326.

(*b*) *Turner* v. *Robinson* (1860). 10 Ir. Ch. 510. But see *Dalglish* v. *Jarvie* (1850), 2 Mac. & Gor. 231. 2 H. & T. 137, and 25 & 26 Vict. c. 68.

(*c*) Author of "The Religion of Nature Delineated," p. 136.

(*d*) Maugham, Lit. Prop.

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severest restrictions on the press. About this period there are several decrees and ordinances of the Star Chamber regulating the manner of printing, the number of presses throughout the kingdom, and prohibiting all printing against the force and meaning of any of the statutes or laws of the realm. Until the year 1640 the Crown through the instrumentality of the Star Chamber, exercised this restrictive jurisdiction without limit, enforcing by the summary powers of search, confiscation and imprisonment, its decrees, without the least obstruction from Westminster Hall or the Parliament in any instance.

In 1556, by a decree of the Star Chamber, it was forbidden, amongst other things, to print contrary to any ordinance, prohibition, or commandment in any of the statutes or laws of the realm, or any injunction, letters-patent, or ordinances set forth, or to be set forth by the queen's grant, commission, or authority.

By another decree, dated June 23rd. 1585, every book was required to be licensed, and all persons were prohibited from printing "any book, work, or copy against the form or meaning of any restraint contained in any statute or laws of this realm, or in any injunction made by her Majesty, or her Privy Council; or against the true intent and meaning of any letters-patent, commissions or prohibitions under the great seal, or contrary to any allowed ordinance set down for the good government of the Stationers' Company."

In 1623, a proclamation was issued to enforce this decree; reciting that it had been evaded, among other ways "by printing beyond sea such allowed books, works, or writings as have been imprinted within the realm, by such to whom the sole printing thereof by letters-patent or lawful ordinance or authority doth appertain."

In 1637, the Star Chamber again decreed that "no person is to print or import (printed abroad) any book or copy which the Company of Stationers, or any other person, hath or shall, by any letters-patent, order or entrance in their register book, or otherwise, have the right, privilege, authority, or allowance, solely to print" (*a*).

(*a*) 1 Burr. 2312. "It is natural to suppose," says Mr. Hallam (1 Const. History 238), "that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free inquiry through the press. The trades of printing and bookselling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors, the council frequently issued proclamations to restrain the importation of books, or to regulate their sale. It was penal to utter, or so much as to possess, even the most learned works on the Catholic side; or, if some connivance was usual in favour of educated men, the utmost strictness was used in suppressing that light infantry of literature—the smart and vigorous pamphlets with which the two parties arrayed against the Church assaulted her opposite flanks. Stow, the

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On abolition of Star Chamber all restraints on printing deemed illegal.

In 1640, however, the Star Chamber was abolished; the King's authority was set at nought: all the regulations of the press, and restraints previously imposed upon unlicensed printers by proclamations, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed and certainly were illegal. The licentiousness of libels induced Parliament to make an ordinance which prohibited printing unless the book was first licensed. The ordinance prohibited printing without the consent of the owner, or importing (if printed abroad), upon pain of forfeiting the same to the *owner or owners of the copies* of the said books, &c. This provision necessarily presupposed the property to exist; it would have been nugatory if there had been no admitted owner. An owner could not at that time have existed otherwise than by common law. In 1649 the long Parliament made another ordinance: and in 1662 was passed the Licensing Act (13 & 14 Car. 2, c. 33), which interdicted the printing of any book unless first licensed and entered in the registry of the Stationers' Company. It ordered that no person should presume to print "any heretical, seditious, schismatical or offensive books or pamphlets, wherein any doctrine or opinion shall be asserted or maintained which is contrary to the Christian faith, or the doctrine or discipline of the Church of England, or which shall, or may tend to be to the scandal of religion or the church, or the government or governors of the church, state, or commonwealth, or of any corporation or particular person

The Licensing Act of Car. 2.

well-known chronicler of England, who lay under a suspicion of an attachment to popery, had his library searched by warrant, and his unlawful books taken away: several of which were but materials for his history. Whitgift, in this as in every other respect, *aggravated the rigour of preceding times*. At his instigation, the Star Chamber in 1585 published ordinances for the regulation of the press. The preface to these recites 'enormities, and abuses of disorderly persons professing the art of printing and selling books,' to have more and more increased, in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer, therefore, is enjoined to certify his presses to the Stationers' Company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer who has only set up his trade within six months to exercise it any longer, nor any to begin it in future until the excessive multitudes of printers be diminished and brought to such a number as the Archbishop of Canterbury and Bishop of London, for the time being shall think convenient: but whenever any addition to the number of master printers shall be required, *the Stationers' Company shall select proper persons to use that calling*, with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the Archbishop of Canterbury or Bishop of London, except the Queen's printers, who shall require the licence only of the chief justices. Every one selling books printed contrary to the intent of this ordinance, to suffer three months' imprisonment. The Stationers' Company empowered to search houses and shops of printers and booksellers, and to seize all books printed in contravention of this ordinance, to destroy and efface the presses, and to arrest and bring before the council those who shall have offended therein."

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or persons whatever." It further prohibited the publication of unlicensed books, prescribed regulations as to printing, and empowered the King's messengers, and the master and wardens of the Stationers' Company, to seize books suspected of containing matters hostile to the Church or Government. It was necessary to print in the beginning of every licensed book the certificate of the licenser to the effect that the books contained nothing "contrary to the Christian faith, or the doctrine or discipline of the Church of England, or against the state and government of this realm, or contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require." To prevent fraudulent changes in a book after it had been licensed, a copy was required to be deposited with the licenser when application was made for a licence.

The Act further prohibited any person from printing or importing without the consent of the owner, any book which any person had the sole right to print by virtue of letters-patent, or "by force or virtue of any entry or entries thereof duly made or to be made, in the register book of the said Company of Stationers, or in the register book of either of the universities." The penalty of piracy was forfeiture of the book and six shillings and eightpence for each copy: half to go to the king, and half to the owner.

The sole property of the owner is here acknowledged in express terms as a common law right: and the legislature which passed that Act could never have entertained the most distant idea "that the productions of the brain were not a subject-matter of property." To support an action on this statute ownership had to be proved or the plaintiff could not have recovered, because the action was to be brought by the owner, who was to have a moiety of the penalty. The various provisions of this Act effectually prevented piracies, without actions at law or bills in equity. But cases arose of disputed property. Some of them were between different patentees of the Crown: in some the point was whether the property "belonged to the author, from his invention and labour, or the king, from the subject-matter."

The ordinance of 1643 prohibited the printing or importing of any book that had been lawfully licensed and entered in the register of the Stationers' Company, "for any particular member thereof, without the licence and consent of the owner." The penalty prescribed was forfeiture of the book to the owner, "and such further punishment as shall be thought fit." This clause was repeated in the ordinances of 1647, 1649, and 1652.

It has been questioned whether these clauses were applicable to any than members of the Stationers' Company—in fact, whether they were more than by-laws for the regulation of the members *inter se*. but it is doubtful whether any such restriction can be put upon their scope.

The Licensing Act of Car. 2 was continued by several Acts of Parliament, but expired May 1679; soon after which there is a case in Lilly's 'Entries of Hilary Term,' 31 Car. 2, B. R. (*a*). In this case an action was brought for printing 4000 copies of the 'Pilgrim's Progress,' of which the plaintiff was the true proprietor, whereby he lost the profit and benefit of his copy. There is no account, however, of the case having been proceeded with.

Ordinance of the Stationers' Company in 1681.

In 1681, all legislative protection having ceased, the Stationers' Company adopted an ordinance or by-law, which recited that several members of the company had *great part of their estates in copies*, that by ancient usage of the company, when any book or copy was duly entered in their register to any member, such person had always been reputed and taken to be the proprietor of such book or copy, and ought to have the sole printing thereof. The ordinance further recited that this privilege and interest had of late been often violated and abused; and it then provided a penalty against such violation by any member or members of the company, where the copy had been duly entered in their register. The true view of this ordinance would seem to be, that the members of the Stationers' Company, finding their estates in copies, which belonged to them by the common law, no longer under the protection of the Licensing Act (the repeal of which had incidentally withdrawn the protection that had always been inserted in it, though it had necessarily no connection with the system of licensing), undertook to provide for the failure of legislation, as far as they could, by an ordinance applicable of course to their own members only. The ordinance is not to be cited as any other proof of what the common law right was than that it shows, in connection with other historical proof, what it was then supposed to be. It was much the same as if an association of persons were to agree that any one of their number should pay a penalty for violating the acknowledged rights of property of any other person in the association, provided such rights were duly entered in their common records. It would not be an attempt to create the right, but it would justly be

(*a*) *Ponder* v. *Bradyl*, Lilly's 'Entries,' 67; see Carter, 89; 1 Burr. 2317; Skinner, 234; 1 Mod. 257.

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regarded as an acknowledgment of the existence of such a right (*a*).

A by-law of the Stationers' Company in 1694.

In another by-law, passed in 1694 (*b*), it was stated that copies were constantly bargained and sold amongst the members of the company as their property, and devised to their children and others for legacies and to their widows for maintenance; and it was ordained, that if any member should, without the consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve-pence.

For many years successively attempts were made to obtain a new Licensing Act. Such a bill once passed the upper house, but the attempt miscarried upon constitutional objections to a licence. Proprietors of copyright had so long been protected by summary measures, that they regarded an action at law as an inadequate remedy. A bill in equity was never even thought of: no hope of its success appears at the time to have been entertained.

A petition presented to Parliament in 1709 for protection of copyright.

In one of the petitions presented to the House in support of applications to Parliament in 1709, for a bill to protect copyright, the last clause or paragraph was as follows: "The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained but by an Act of Parliament. For by common law, a bookseller can recover no more costs than he can prove damage: but it is impossible for him to prove the tenth, nay, perhaps, the hundredth part of the damage he suffers; because a thousand counterfeit copies may be dispersed into as many hands all over the kingdom, and he not be able to prove the sale of them. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. (No man of substance has been known to offend in this particular, nor will any ever appear in it.) Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench or Fleet, and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders" (*c*).

The first Copyright Act, 8 Anne, c. 19.

In response to these applications, in the year 1709 the Act 8 Anne, c. 19, was passed. It recites that printers, booksellers, and other persons had of late frequently taken the liberty of printing, reprinting, and publishing books and other writings

(*a*) Curtis on Copy. p. 38.

(*b*) In this year expired finally the Licensing Act of 13 & 14 Car. 2, which had been revived by 1 Jac. c. 7, and continued by 1 W. & M. c. 21.

(*c*) 4 Burr. 2318.

without the consent of the authors or proprietors, to their very great detriment, and too often to the ruin of them and their families. For preventing, therefore, such practices for the future, and for the encouragement of learned men to compose and write useful books, it was enacted, that the authors of books already printed who had not transferred their rights, and the booksellers or other persons who had purchased or acquired the copy of any books in order to print or reprint the same, should have the sole right and liberty of printing them for a term of twenty-one years from the 10th of April, 1710, and no longer; and that authors of books not then printed, should have the sole right of printing for fourteen years and no longer. It also provided that any person who should publish, import, or sell piratical copies should forfeit such copies to the owner of the copyright, to be by him destroyed, and pay one penny for every sheet found in his possession. One half of this penalty was to go to the Queen and the remainder to any person who should sue for it. There was a proviso, however, which permitted the importation and sale of "any books in Greek, Latin, or any other foreign language, printed beyond the seas." That no person might offend against the Act through ignorance, it was provided that no book should be entitled to protection unless the title to the copy had been entered before publication in the register book of the Stationers' Company, which book should be kept open for inspection at any time without fee. The Act further required that nine copies of each book should be delivered to the warehouse-keeper of the said company for the use of the royal library in London, the Universities of Oxford and Cambridge, the four Universities in Scotland, Sion College in London, and the library of the Faculty of Advocates in Edinburgh, inflicting a penalty in default of such delivery, besides the value of the said printed copies, of the sum of £5 for every copy not so delivered (*a*). If any bookseller or printer should offer for sale a book at such a price or rate as should be conceived by any person to be too high or unreasonable, the price might be reduced and fixed at a reasonable figure by the Archbishop of Canterbury, the Chancellor or Lord Keeper of the Great Seal, the Bishop of London, the Chief Justices of the Queen's Bench and Common Pleas, or other designated officials (*b*).

(*a*) The number was extended to eleven copies by 11 Geo. 3. c. 107. s. 6. amended by 54 Geo. 3. c. 156, s. 2. and the number was limited to five by the 6 & 7 Will. 4. c. 110.

(*b*) This provision was repealed by the 12 Geo. 2. c. 36.

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The Act prohibited any one from importing a book which had been printed without the written consent of the owner of the copyright. And lastly it provided, that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years. Thus by the Act of Anne, two classes of books were protected, first, those already published, in which copyright was acknowledged for twenty-one years; second, those not then published, for which a term of fourteen years was secured, with a further term of fourteen years in the event of the author being then living.

The common law right to old copies.

The general question upon the common law right to old copies of works could not arise until the expiration of the full term conferred by the Act of Anne, that is, until twenty-one years from the 10th of April, 1710. Shortly after the expiration of this period, in 1735, in the case of *Eyre* v. *Walker* (*a*), Sir Joseph Jekyll granted an injunction to restrain the defendant from printing the 'Whole Duty of Man,' the first publication of which had been made in December 1657, and this was acquiesced under.

Injunctions issued in support of this right.

In the same year, in the case of *Motte* v. *Falkner* (*b*), an injunction was granted for printing Pope's and Swift's 'Miscellanies.' Many of the pieces had been published in 1701, 1702, and 1703, and the counsel strongly pressed the objection as to these pieces. Lord Talbot, however, continued the injunction as to the whole, and it was acquiesced under.

In the following year, in the case of *Walthoe* v. *Walker*, an injunction was granted for printing Nelson's 'Festivals and Fasts,' though the bill set forth that the original work was printed in the lifetime of Robert Nelson, the author, and that he died in 1714. This also was acquiesced under.

In 1739 Lord Hardwicke granted a fourth injunction to restrain the defendant from printing Milton's 'Paradise Lost.' The plaintiffs derived their title under an assignment of the copy from the author in 1667. This injunction was also acquiesced under (*c*). In 1751 Milton's poem again came before Lord Hardwicke, in the form of an application for an injunction to restrain the defendants printing the same with the notes of Dr. Newton and other commentators, all of which belonged to the plaintiffs. The bill, as in the former applica-

(*a*) (1735) Cited 4 Burr. 2325; 3 Swans. 673: 1 W. Bl. 331; see 2 Eden. 328.
(*b*) (1735) Cited 4 Burr. 2325.
(*c*) *Tonson* v. *Walker* (1739), 3 Swans. 676: 4 Burr. 2325, 2327, 2379, 2380: 1 W. Bl. 345: 2 Eden. 328: 1 Cox. 285.

tion, derived a title to the poem from the author's assignment in 1667, and a title to the life by Fenton, published in 1727, to Bentley's notes, published in 1732, and to Dr. Newton's notes, published in 1749. The defendants put in an answer, and set up notes of their own, of which it appeared there were twenty-eight, while the notes of the other commentators belonging to the plaintiffs, and included in the defendants' edition, numbered 1500. Lord Hardwicke gave judgment in 1752, and held that the plaintiffs' notes were within the protection of the statute; and as to the poem, although he said that the general question had never been determined, and there was a doubt, yet he granted the injunction until the hearing (*a*).

Principle on which the injunctions were issued.

All these injunctions were issued and acquiesced in under the presumption that at common law copyright was perpetual, and that such common law right remained unaffected by the statute of Anne; had there been a reasonable doubt in the minds of the judges the injunctions would have been improper (*b*), for no reparation could be afforded to the defendants for the damage sustained thereby, in the case of their being unimpeachable in respect of the piracies complained of. Speaking of these injunctions, Lord Mansfield said, "I look upon them as equal to any final decree" (*c*).

The celebrated cases of *Millar* v. *Taylor*, *Donaldson* v. *Becket*.

The common law right was at length disputed and fully discussed in the celebrated case of *Millar* v. *Taylor* (*d*). The work in controversy was Thomson's 'Seasons,' and the copyright secured by the statute of Anne had expired. The action was brought in 1766, and was decided by the Court of King's Bench 1769, judgment being given for the plaintiff on the ground that the common law right to copyright was unaffected by the statute of Anne. However, in a case (*e*) determined on the authority of the last mentioned decision, the defendant appealed to the House of Lords, on which occasion the following questions were propounded to the judges:

(*a*) *Tonson* v. *Walker* (1752). 3 Swans. 672; 4 Burr. 2325, 2327, 2379, 2380; 1 W. Bl. 345; 2 Eden. 328; 1 Cox. 285.

(*b*) *Hill* v. *The University of Oxford* (1684). 1 Vern. 275; *Grierson* v. *Jackson*, Ir. Term R. 304: *Univers. of Oxf. and Cam.* v. *Richardson* (1802). 6 Ves. 689; *Bruce* v. *Bruce* (1806), cited 13 Ves. 505: *Harmer* v. *Plane* (1807). 14 Ves. 130: *Hogg* v. *Kirby* (1803). 8 Ves. 224. And see Lord Erskine in *Gurney* v. *Longman* (1806), 13 Ves. 505: *The Assignees of Robinson* v. *Wilkins* (1805), cited 8 Ves. 224.

(*c*) *Millar* v. *Taylor* (1769). 4 Burr. 2399. (*d*) 4 Burr. 2303.

(*e*) *Donaldson* v. *Becket* (1774). 4 Burr. 2408: 2 Bro. Parl. Cas. 129. Lord Kenyon expressed a decided opinion that no such right existed: *Beckford* v. *Hood* (1798). 7 T. R. 620. Lord Ellenborough inclined to the same view: *Cambridge Univ.* v. *Bryer* (1812). 16 East, 317; and a majority of the judges in *Wheaton* v. *Peters*, 8 Peters (Amer.) 591, arrived at the same conclusion. See *Jefferys* v. *Bousey* (1854), 4 H. L. C. 815.

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1st. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?

2nd. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition? And might any person afterwards reprint and sell, for his own benefit, such book or literary composition, against the will of the author?

3rd. If such action would have lain at common law, is it taken away by the statute of 8th Anne? And is an author, by the said statute, precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby?

4th. Whether the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity by the common law?

5th. Whether this right is in any way impeached, restrained, or taken away by the statute, 8th Anne.

Eleven judges delivered their opinions *seriatim*; ten to one for the affirmative on the first question; eight to three for the negative on the second question: six to five for the affirmative on the third question; seven to four for the affirmative on the fourth question; and six to five for the affirmative on the fifth question; so that it was declared that, although an author had by common law an exclusive right to print his works, and does not lose it by the mere act of publication, yet the statute of Anne had completely deprived him of the right. It was notorious that Lord Mansfield concurred with the ten upon the first question, with the eight upon the second, with the five upon the third, with the seven on the fourth, and with the five on the fifth; but it being very unusual (from reasons of delicacy) for a peer to support his own judgment upon an appeal to the House of Lords, he did not speak (*a*).

(*a*) For a fuller report of the case of *Donaldson* v. *Beckett*, see Hans. Parl. Hist., vol. xvii., col. 953. In Scotland this question had been tried as early as 1748, and decided against the author's right: *Midwinter* v. *Hamilton*, June 7, 1748; Mor. Dict. of Dec. 19, 20, 8305. On appeal the case went off upon informality in the original summons: Feb. 11, 1751; 1 Cr. & St. 188. The same decision was pronounced in *Hinton* v. *Donaldson*, July 28, 1773, Mor. Dict. of Dec. 19, 20, 8307; 3 Brown's Sup. 508, 5 Pat. 509 n.; and in *Cadell & Davies* v. *Robertson*, Dec. 18, 1804, Mor. Dict. of Dec., App., Lit. Prop. 5, as delivered in the House of Lords, July 16, 1811 (5 Paton. 193), the author's right was held to depend entirely on the Act of Queen Anne: Bell's Com. *See Payne* v. *Anderson*, Mor. Dic. of Dec., vols. 19, 20, p. 8316; and *Cadell* v. *Anderson*, Mor. Dict. of Dec. 19, 20, 834, cited Philips on Copy, 43.

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The case of *Jefferys* v. *Boosey*.

The more general opinion is certainly now against the common law right after publication. For though in the case of *Jefferys* v. *Boosey* (*a*), the decision of the question was not necessary to the point at issue, yet it being somewhat implicated, many of the judges pronounced their opinion with reference to the right. Of the ten common law judges who delivered their opinions, Erle, J., believed in the existence of the common law right: but Parke, B., Pollock, C.B., and Jervis, C.J., announced the contrary opinion: while Crompton, Williams, Wightman, Maule, Coleridge, and Alderson, expressed no opinion on the point. Lords Cranworth, Brougham, and St. Leonards were unanimous against the right, the last saying: "Upon the claim of common law right, I confess I never have, at least for many years, been able to entertain any doubt. It is a question which I have often, in my professional life, had occasion to consider, and upon which I have arrived, long since, at the conclusion, that no common law right exists after publication. I never could, in my own mind, distinguish between the right to an invention after the publication of that invention, and the right to the description of that invention after the publication of that description. If a mechanical genius should invent a machine of the greatest importance to mankind, it is admitted, nobody attempts to insist or to argue otherwise, and it has always been considered as settled, that after he has disposed of even a single copy of it, it may, so far as the common law is concerned, be copied and made use of without restriction by the purchaser, or by any person who properly obtains possession of it. Now, I do not see how you are to estimate differently different kinds of genius; or how you can say that a man who invents a machine of the greatest importance to the State, shall not have any right the moment he disposes of a single copy of that article, but that a man whose mind brings forth a certain collection of words, shall be entitled to an absolute property in it in all time, even after he has published it, and let the world at large have it. It appears to me, therefore, and always has so appeared, that there is no such common law right either in the one case or in the other: and I agree with my noble and learned friend who has last addressed your lordships, that the patent law is decidedly against the common law right in this particular instance, because it shows that the inventor had not the right. . . . Now, when we are talking of the right of an author, we must distinguish (as has been already very accurately done)

(*a*) (1854). 4 H. L. C. 815.

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Notwithstanding the admission that the general current of opinion is against the common law right, there can be no doubt that until 1774, when the case of *Donaldson* v. *Becket* was decided, the universal opinion was the other way, and it has the support of some of the ablest judges who ever adorned the Bench.

The point came before the court in a subsequent case (*a*) in which Dr. Reade claimed damages for the infringement of his novel, 'It is Never too Late to Mend.' Mr. Justice Williams in delivering the judgment of the court, said: "The main reliance of the plaintiff was placed on the general ground that even if his statutable right had not been infringed, yet that as an author, he had a copyright at common law, concurrently with, but more extensive than, his right under that statute, and that such common law right had been invaded by the act of the defendant.

"Now, it is not necessary, in order to decide the present case, to consider the question upon which so much learning has been exhausted: viz., whether anterior to the statute of Anne there existed a copyright at common law in published books, more extensive in its nature and duration than the right conferred or expressed by that statute. There can, we think, be no doubt that the weight of authority in the time of Lord Mansfield was in favour of the existence of such a right, although the doctrine has found less favour in modern times: but the continued existence of any such right, after the passing of the statute of Anne, was distinctly denied by the majority of the judges in *Donaldson* v. *Becket* (*b*), and the case itself expressly decides that no such right exists after the expiration of the period prescribed by the Act.

(*a*) *Reade* v. *Conquest* (1861), 9 C. B. N. S. 768: 9 W. R. 131. See *Warne* v. *Seebohm* (1888), 39 Ch. Div. 73.

(*b*) 4 Burr. 2408: 2 Bro. P. C. 129.

"The question therefore seems to us narrowed to this, viz., whether the statute of Anne having expressly put an end to such a right if it ever existed after the period it prescribes, has yet preserved it during the currency of such period. That it has done so is a proposition which we think it difficult for the plaintiff to maintain. That a common law right of action attaches upon the invasion of the copyright created by statute, was decided in the case of *Beckford* v. *Hood* (*a*), and followed in several other cases, but we are not aware of any case since *Miller* v. *Taylor* (*b*) was overruled by the House of Lords, which decides and recognises that an author of a published work has any other than the statutable copyright therein.

"In the case of *Murray* v. *Elliston* (*c*), (before the 3 & 4 Will. 4, c. 15) Lord Byron's tragedy of 'Marino Faliero,' the copyright of which belonged to the plaintiff, had been abridged by curtailing the dialogues and soliloquies, and publicly represented in that form by the defendant at Drury Lane Theatre for profit, the advertisements describing it as Lord Byron's tragedy. A bill for an injunction having been filed, a case was sent for the opinion of the Court of Queen's Bench, whether the plaintiff could maintain an action against the defendant under the circumstances. The argument for the plaintiff there was put upon the same ground as in the present case, but the court certified that no action would lie, a decision which appears in point against the plaintiff upon this record.

"That much might be urged in favour of the common law right if the question were *res integra* cannot be doubted by any one who has read the learned judgments of the majority of the court in *Miller* v. *Taylor*, and (on the part of my brother Keating and myself, I must be allowed to add) of Mr. Justice Erle in the case of *Jefferys* v. *Boosey* (*d*). But it was the opinion of a large majority of the judges and law lords in that case, that the time was past when the question was open to discussion, and that it must now be considered to be settled, that copyright in a published work only exists by statute.

"The learned counsel for the plaintiff in his argument cited a case of *Turner* v. *Robinson* (*e*), in which it was supposed that the Master of the Rolls in Ireland had taken a view favourable to the plaintiff's claim in the present case. Upon looking to the report, however, it will be found that the opinion of that

(*a*) (1798), 7 T. R. 620.
(*b*) (1769), 4 Burr. 2303.
(*c*) (1822), 5 Barn. & Ald. 657 : 24 R. R. 519.
(*d*) (1854), 4 H. of Lords Cas. 876.
(*e*) (1860), 10 Ir. Ch. Rep. 121 : on appeal 510.

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learned judge is directly opposed to such a claim. In that case the plaintiff had applied for an injunction to prevent the defendant from pirating an original picture of 'The Death of Chatterton,' of which the plaintiff was proprietor, by means of stereoscopic apparatus. The Master of the Rolls being of opinion upon the facts that there had been no publication of the picture, and that the imitation was a piracy, granted the injunction, but his opinion upon the point involved in the claim of the plaintiff upon this record was thus expressed:—'It is not necessary,' said that learned judge, 'to go through the authorities collected in the cases to which I have referred (*a*), as I apprehend it is clear that by the common law copyright or protection exists in favour of works of literary art or science to this limited extent only, that while they remain unpublished no person can pirate them, but that after publication they are by common law unprotected. There has been much difference of opinion on the subject among the judges in England, but the law is now considered to be as I have stated it.' The opinion of the Master of the Rolls in Ireland may therefore be added to the weight of authority in this country in favour of the position, that copyright or protection to the works of literature after they have been published, exists only by statute."

The universities obtain an Act for the protection of their copyrights.

The universities, alarmed at the consequence of the decision in *Donaldson* v. *Becket*, applied for and obtained an Act of Parliament (15 Geo. 3, c. 53) establishing in perpetuity their right to all the copies given or bequeathed them theretofore or which might thereafter be given to or acquired by them (*b*).

The period for which copyright was capable of existing was somewhat varied by the 54 Geo. 3, c. 156, s. 4, which enacted that instead of enduring for fourteen years, and contingently for fourteen more, authors should have the sole liberty of printing and reprinting their works for the term of twenty-eight years, to commence from the day of the first publication of the same; and further, if the author should be living at the expiration of that period, for the residue of his natural life (*c*).

The present Literary Copyright Act, 1842.

All these Acts have been repealed by the Copyright Act. 1842 (*d*), on which the law of literary copyright now depends.

(*a*) *Prince Albert* v. *Strange* (1849), 1 McN. & Gor. 25: 1 Hall & Twells, 1: *Jefferys* v. *Boosey* (1854), 4 H. of Lords Cas. 815.

(*b*) *Vide post*, chap. x.

(*c*) An author whose works had been published more than twenty-eight years before the passing of this statute was held not to be entitled to the copyright for life: *Brooke* v. *Clarke* (1818), 1 B. & Ald. 396.

(*d*) 5 & 6 Vict. c. 45. See Short Titles Act, 1892.

To Mr. Serjeant Talfourd is due the honour of obtaining this piece of legislative justice. From 1837 to 1842, in spite of the opposition of Macaulay, he used his best endeavours and expended his most eloquent strains to accomplish its passing. In contending for an extension of the period during which protection was afforded to literary works, he bursts forth:—"There is something peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth, sufficiently full of hope and joys to slight its promises. It gives a bounty to haste, and informs the laborious student, who would wear away his strength to complete some work which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the *moment it is most needed*; and when the benignity of nature would extract from her last calamity a means of support and comfort to the survivors—at the moment when his name is invested with the solemn interest of the grave—when his eccentricities or frailties excite a smile or a shrug no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country—your law declares that his works shall become your property, and you requite him by seizing the patrimony of his children."

Except for the International Copyright Acts, there has been no Act of Parliament dealing with literary copyright since the year 1842, though there have been statutes relating to artistic and musical copyright. In the year 1875 a Royal Commission was appointed to inquire into the working of the Copyright Acts generally, and the Commissioners, after taking evidence, made a valuable Report in the year 1878, suggesting various amendments of the law, but, so far as literary copyright is concerned, none of these suggested amendments have yet passed into law. In the year 1900 a Bill (commonly known as Lord Monkwell's Bill or Lord Thring's Bill) was introduced into the House of Lords and referred to a Select Committee, which, after taking evidence, reported the Bill to the House with suggested amendments: but nothing further has been done.

Subsequent efforts at legislation.

CHAPTER II.

WHAT MAY BE THE SUBJECT OF COPYRIGHT.

The subject of copyright.

THERE can be no copyright in an intellectual creation however defined in the author's mind, unless embodied in written or spoken language, then only can it possess the attributes of property.

The copyright is not merely in the form of words which are expressive of the intellectual creation, but in the intellectual conception which is so expressed.

Whether work must be original.

It has been sometimes assumed that in order to acquire a copyright in a work it is necessary that it should be original, in the sense of being novel. Thus, Mr. Curtis (*a*) lays it down that an author seeking to protect his work must show something "to have been produced by himself: whether it be a purely original thought or principle unpublished before, or a new combination of old thoughts, and ideas, and sentiments, or a new application or use of known and common materials, or a collection, the result of his industry and skill. In whatever way he claims the exclusive privilege accorded by these laws, he must show something which the law can fix upon as the product of his, and not another's, labour" (*b*). The Copyright Act, 1842, however, says nothing about originality (*c*). It recites that "it is expedient . . . to afford greater encouragement to the production of literary works of lasting benefit to the world" (*d*), and, by section 3, the copyright is vested in the "author," but "copyright" itself is defined by section 2 as the "sole and exclusive liberty of printing or otherwise multiplying

(*a*) "Copyright," chap. 5.

(*b*) See also *Chappell* v. *Purday* (1845), 14 M. & W., p. 316: *Dick* v. *Yates* (1881), 18 Ch. D. 77: *Caird* v. *Sime* (1887), 12 A. C. 326, 343: *Leslie* v. *Young* (1894), A. C. 335.

(*c*) The Fine Arts Copyright Acts, 1862. Sec. 1, on the other hand, confers copyright upon the author of "every *original* painting, drawing and photograph."

(*d*) The preamble is clearly part of a Statute, see Hardcastle on Statutory Law, pp. 207 *et seq.* "Two propositions are quite clear, one that a preamble may afford useful light as to what a Statute intends to reach, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment." *Per* Halsbury, L. C., *Powell* v. *Kempton Park* (1899), A. C. 143, 157.

copies" of every "volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published."

Reports of Lord Rosebery's speeches.

In the much discussed case of *Walter* v. *Lane* (*a*), the point arose whether a reporter is entitled to copyright in his verbatim report of a public speech. The plaintiffs were the proprietors of the 'Times', and the defendant published a book called 'Appreciations and Addresses delivered by Lord Rosebery,' which contained practically verbatim copies of the reports in the 'Times' of five speeches delivered by Lord Rosebery during the years 1896 and 1898. The reports of these speeches had been obtained in the usual way by the 'Times' sending their reporters to the meetings, the speeches being taken down verbatim in shorthand and transcribed. The defendant admitted that he had used in preparing his work cuttings from the 'Times,' and in four cases the speeches appeared in his book without any alteration whatever. Lord Rosebery made no claim to copyright in any of the speeches, and the 'Times' brought their action claiming a declaration that they were entitled to the copyright of the reports in question and an injunction to restrain the defendant from further publishing any book containing copies of them. North, J., granted an injunction, but, upon appeal, the Court of Appeal reversed his decision, holding that the Copyright Act was passed to protect authors, not reporters, and that shorthand reporters are not authors. "If," said Lindley, J., "the reporter of a speech gives the substance of it in his own language: if, although the ideas are not his, his expression of them is his own and not the speaker's, with immaterial differences, the reported speech would be an original composition, of which the reporter would be the author, and he would be entitled to copyright in his own production. . . . But we have not to deal with speeches re-cast by the reporter. He has reproduced to the best of his ability, not only the ideas expressed by the speaker, but the language in which the speaker expressed those ideas. In other words, we are dealing with the most accurate report of the speaker's words which the reporter could make. No doubt it requires considerable education and ability to make a good report of any speech. But an accurate report *is not an original composition*, nor is the reporter of a speech the author of what he reports" (*b*).

The plaintiffs thereupon appealed to the House of Lords, and were successful in obtaining a reversal of the decision of

(*a*) (1900). A. C. 539; 69 L. J. Ch. 699; 81 L. T. 571; 18 W. R. 228.
(*b*) (1899). 2 Ch. 749, 772.

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the Court of Appeal. In the course of his judgment in the House of Lords, Lord Halsbury, L.C., made the following remarks: "I observe that the Court of Appeal introduces the words 'original composition' as if those were the words of the statute; and at another part of the judgment it is said that 'the report and the speech reported are, no doubt, different things, but the author or publisher of the report is not the author of the speech reported, which is the only thing which gives any value or interest to the report.' The sentence is a little difficult to construe, but, as I understand it, it means to convey that the thing to which the statute gives protection must be of some value or interest. Again, I am compelled to point out that such words are not to be found in the statute. The producer of this written composition is, to my mind, the person who is the author of the book within the meaning of the statute, and, as I have pointed out, the words 'original composer' are not to be found in the statute at all; and, as I understand, the judgment of the Court of Appeal is entirely based on the thing protected being an original composition in the sense that the person who claims the protection of the statute must not have obtained his words or ideas from somebody else, but must be himself an original author in the sense in which that word is generally used in respect of literary composition" (*a*). Later on he says: "Though I think in these compositions there is literary merit and intellectual labour, yet the statute seems to me to require neither, nor originality either in thought or in language . . . I do not find the word 'original' in the statute, or any word which imports it, as a condition precedent, or makes originality of thought or idea necessary to the right." In the Lord Chancellor's view copyright "is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit or of no merit whatever" (*b*). Likewise Davey, L.J., did not think "the fact that the subject-matter of the report had been made public property, or that no originality or literary skill was demanded for the composition of the report, have anything to do with the matter, . . . but it is a sound principle that a man shall not avail himself of another's skill, labour, and expense by copying the written product of it" (*c*).

Effect of decision in *Walter* v. *Lane*.

The effect of this decision has been sometimes misconceived. The Court did not decide that the reporter had copyright in Lord Rosebery's speech, but in the *report* of it. Any other

(*a*) (1900), A. C., pp. 546, 547. (*b*) *ib.* p. 549.
(*c*) *ib.* p. 552. *Collis* v. *Cater* (1898), 78 L. T. 613.

person present at Lord Rosebery's meeting might have taken his speech down in shorthand and obtained copyright in his individual report, but no person was entitled to annex the result of the 'Times' reporter's labour. Indeed it would appear that copyright is conferred not so much on expression or substance as upon the skill, labour, and expense bestowed by the compiler. The report was not original in the sense that the words and sentiments were new, but it was original, and the reporter was an author in the sense that, without him, the report would have had no existence.

Can a mere copyist have copyright?

In this last sense originality is, perhaps, necessary in order to obtain copyright. A mere copyist of a written document, in which no copyright exists, has no right to protect his copy (*a*); but even in such a case the Court would, it is conceived, protect a copyist, who had obtained his copy under circumstances involving peculiar labour or expense, from infringement by a person who had not taken the trouble to go to the original sources.

Letters of Dorothy Osborne.

In a recent case of *Perry* v. *Moring* (*b*) the plaintiff published a book entitled 'Letters from Dorothy Osborne to Sir William Temple, 1652–54." These letters were, at the time when the plaintiff issued his book, in a private collection, whilst most of them were undated and in old English spelling. The plaintiff had had these letters copied, translated them into modern English spelling, arranged them in the order of date in which he considered they had been written, and published them with notes. Subsequently, the original MSS. were bought by the British Museum authorities, and it was in evidence that they claimed no copyright in these originals. The defendants then published an edition of these same letters, and in their edition the letters were placed in practically the same order as in the plaintiff's. The plaintiff moved for an interlocutory injunction restraining the infringement of his copyright (*c*), and, on the defendants admitting that they had sent the plaintiff's book to their printers, and had the text of the letters printed direct from this, without having taken the trouble to get the letters copied from the originals in the British Museum, the Judge expressed such a strong opinion that this method could not be defended, that the defendants submitted to an injunction and

(*a*) See *per* James L.J., *Walter* v. *Lane* (1900), A. C. at p. 551 : *Leslie* v. *Young* (1894), A. C. 335 : *a fortiori* if the copy is a piracy. *Cary* v. *Faden* (1799), 5 Ves. 24.

(*b*) 3rd April, 1903, before Farwell, J.

(*c*) The plaintiff complained of infringement in respect of (1) Notes : (2) Arrangement : (3) Text : and (4) Title. The defendants admitted infringement in the matter of the text and it became unnecessary to go into the other matters.

an inquiry as to damages, and to treat the motion as the trial of the action (*a*).

Copyright may exist in a new arrangement or in novel additions.

Copyright may be claimed by an author of a book who has taken existing materials, from sources common to all writers, and arranged and combined them in a new form, and given them an application unknown before. For in making the selection, arrangement, and combination, he has exercised skill and discretion, and in producing thereby something that is new and useful he is entitled to the exclusive enjoyment of his production.

Books made and composed in this manner are therefore the proper subjects of copyright; and the author of such a book has as much right in his plan, arrangement, and combination of the materials collected and presented, as he has in his thoughts, sentiments, reflections and opinions, or in the modes in which they are therein expressed and illustrated; but he cannot prevent others from using the old material employed in such combination for a different purpose (*b*).

'Gray's Poems.'

In the case of 'Gray's Poems,' which had been for many years published and were afterwards collected by a Mr. Mason, and reprinted with the addition of several new poems, the Lord Chancellor granted an injunction against a defendant who had copied the whole, though the plaintiff had but a copyright in the additions (*c*).

Accounts of natural curiosities, &c.

If a person compiles an account of natural curiosities or of works of art, or of mere matters of statistical or geographical information, his own description may be the subject of copyright (*d*). It is equally competent, however, for any person to

(*a*) Cf. *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34: *Lamb* v. *Evans* (1893), 1 Ch. 218.

(*b*) Clifford, J., *Laurence* v. *Dana*, 2 Am. L. T. R. (N.S.) 423.

(*c*) *Mason* v. *Murray*, cited 1 East, 360; *Moffatt & Paige* v. *Gill* (1902), 84 L. T. 452; 49 W. R. 438; on app. 86 L. T. 465; 50 W. R. 528.

(*d*) In like manner, the Court of Cassation, in France, decided that a *compilation* may be the subject of copyright, under the law of July 19, 1793. The book was a devotional work, consisting of extracts from the devotional writings of eminent churchmen, arranged in a particular manner, with reference to the festivals of the Church. The correctional tribunal at Lyons decided that the law of July 19, 1793, extended the privileges of authorship only to those who can strictly be called authors—to those who could claim the first conception of a work of literature or art—and not to one who had only copied from the works of others. They held that the compiler of this book had only copied passages from the works of others, with slight verbal alterations and additions, and that neither these nor the plan and arrangement of the book gave it the character of a new work, because the greater part of it, which was copied, and was therefore *publici juris*, drew to itself the lesser part, which was really new, and attached to it the same condition of publicity. From this decree the proprietor appealed to the Court of Cassation; and M. Merlin, arguing against the decree, contended that the law applied not merely to works the fruit of the conceptions of genius, but also to the productions of intelligence; and that the decree confounded a compilation which is the fruit of taste, intelligence, *and exquisite and ingenious combination and arrangement, with a compilation* which implied nothing but an expenditure of time and research, and an indefatigable

compile and publish a similar work; but it must be made substantially new and original, like the first work, by resort to the original sources, and must not be simply a copy or adaptation from the other, under the impression that the subject is common (*a*).

If a man makes an actual survey of certain roads, and depicts such roads on a map, though his map might, and probably would, correspond with many which had previously been published, it would be hard to say that it was not a new work. In such a case it is not a question of the mind, like the 'Essay on the Human Understanding': it lies *in medio*; every man with eyes can trace it, and the whole merit depends upon the accuracy of the observation; every description will therefore be in a great measure original (*b*). If this be so, every edition will be a new work if it differs as much from the last edition as it does from the last precedent work; either all are original works or none of them. It is an extremely difficult thing to establish identity in a map or a mere list of distances; but there may be originality in casting an index, or pointing out a ready method of finding a place in a map (*c*).

Receipt books.

The composing receipts or arranging them in a book will give a copyright to the compiler; but the mere collecting them and handing them over to a publisher will not (*d*); nor will the mere copying that which is public property, for there is nothing in such case to represent authorship on the part of the editor (*e*). However, if there be some new arrangement or classification of the subject, or the copy be at all varied,

patience in copying word for word. He maintained that under this decree the Pandects of Pothier would be no subject of property, but would be open to the first occupant. The court held that the law extends to selections, compilations, and other works of that nature, when they require in their execution, discernment, taste, learning, and intelligent labour: when, in short, instead of being simply copies from one or more other books, they are at the same time the product of conceptions foreign and of conceptions peculiar to the author, in the union of which the matter receives a new form and a new character. The work in question possessed these characteristics, and the decree of the court of first instance was therefore annulled: Merlin, Rep. de Jurisp. tit. Contrefaçon, tom. 3, pp. 701, 708, cited Curtis on Copyright, p. 181.

(*a*) *Hogg* v. *Kirby* (1803), 8 Ves. 215, 7 R. R. 30; *Hotten* v. *Arthur* (1863), 1 H. & M. 603; 32 L. J. (Ch.) 771; 11 W. R. 934; 9 L. T. (N. S.) 199; and in a Scotch case it was held that the directors of the Customs Annuity and Benevolent Fund have a copyright or right of property in the publication 'The Clyde Bill of Entry and Shipping List,' entitling them to protection against piracy: *Walford* v. *Johnston*, 3rd June, 1846; 20 Sess. Cas. 1160. See *Maclean* v. *Moody*, 23 June, 1858, 20 Sess. Cas. 1151.

(*b*) See Lord Jeffrey's observations in *Alexander* v. *Mackenzie* (1847), 9 Sess. Cas. (N.S.) 758; *Blunt* v. *Patten*, 2 Paine (Amer.) 393.

(*c*) *Carman* v. *Beatles* (1786), 2 Bro. C. C. 80; *Taylor* v. *Bayne*, Mor. Dict. of Dec. in Ct. Sess. vols. 19, 20, 8308; *ibid.* App. pt. 1, 7; *Alexander* v. *Mackenzie*, *supra*.

(*d*) *Rundal* v. *Murray* (1821), Jac. 311, 22 R. R. 75, *per* Lord Eldon; *Matthewson* v. *Stockdale* (1806), 12 Ves. 270.

(*e*) But see *Walter* v. *Lane* (1900), A. C. 539.

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then a copyright may exist in it, provided the variation be not merely colourable (*a*).

Similitude between maps.

Thus, where the defendant had used four charts published by the plaintiff in making one large map, but there were very important differences between them, much in favour of the defendants, and the evidence showed the plaintiff's charts to be founded on a wrong principle, Lord Mansfield left it to the jury to say whether the alteration was colourable or not (*b*). And in *Matthewson* v. *Stockdale* (*c*) Lord Eldon said, "I admit that no man can monopolise such subjects as the English Channel, the Island of St. Domingo, or the events of the world; and every man may take what is useful from the original work, improve, add, and give to the public the whole, comprising the original work, with the additions and improvements" (*d*).

Component parts of a compilation not protected apart from the arrangement.

Protection is not given to the component parts of a compilation independently of their arrangement and combination. Of the component parts the compiler is not the author, and he could not acquire an exclusive right to that which is common to all, neither can the arrangement or combination apart from the materials arranged or combined be the subject of protection (*e*). The copyright vests in the materials as arranged and combined, not in the form or the substance apart the one from the other, but in the union of the two (*f*).

Mathematical tables.

It follows from what has been said above, that a person may have copyright in mathematical tables *actually calculated by himself*, although on a fresh calculation the same tables would result from the same *data* and the same principles, and although they may have previously been published before his appeared (*g*).

Selections of poems, &c.

Selections of poems or prose compositions, and collections of proverbs, maxims, quotations, hymns, &c., may be the subjects of copyright (*h*).

Copyright is in a book.

The Act of 1842 confers copyright upon every "book," and

(*a*) *Matthewson* v. *Stockdale*, *supra*: *Barfield* v. *Nicholson* (1824), 2 Sim. & Stu. 1; 25 R. R. 144.

(*b*) *Sayre* v. *Moore* (1785), 1 East. 361. n.

(*c*) (1806), 12 Ves. 275: *Wilkins* v. *Aikins* (1810), 17 Ves. 422.

(*d*) And see Sir L. Shadwell in *Martin* v. *Wright* (1833), 6 Sim. 298. This case can scarcely be reconciled with other decisions: see *Macman* v. *Tegg* (1826), 2 Russ. 385, 26 R. R. 112, and Mr. Justice Story in *Emerson* v. *Davies*, 2 Story, 768, 797.

(*e*) Thus a subsequent writer cannot be held to have infringed a book where he has not borrowed any of the materials of which his book is composed, but has simply adopted the same arrangement.

(*f*) *Lamb* v. *Evans* (1892), 3 Ch. 462: (1893), 1 Ch. 218; *Moffatt & Paige* v. *Gill* (1902), 86 L. T. 165, 50 W. R. 528.

(*g*) *Bailey* v. *Taylor* (1829), 3 L. J. (O. S.) Ch. 66: 1 Russ. & My. 73.

(*h*) *Macmillan* v. *Suresh* (1890), 17 Indian L. R. (Calcutta), 951.

"book" is defined as meaning and including "every volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published," and the question whether copyright can be obtained for a particular publication depends upon whether it can be brought within this definition and not upon literary merit (*a*).

There can be no copyright in specifications of patents (*b*), but there may be in a mining report (*c*), or in a list of registered bills of sale and deeds of arrangement extracted from official sources (*d*), or in a list of foxhounds and hunting days (*e*).

Tradesmen's Catalogues.

The decisions of the Courts have been increasingly favourable to tradesmen's catalogues. In the case of *Hollen* v. *Arthur* (*f*), Sir W. Page Wood, V.-C., restrained the infringement of a bookseller's catalogue containing a description of the books offered for sale, with short anecdotes relating to them.

Grace v. Newman.

This case was followed by Sir Charles Hall, V.-C., in *Grace* v. *Newman* (*g*). The plaintiff there was a "cemetery stone and marble mason," and had published a book containing, with some letterpress, lithographic sketches of monumental designs taken from tombstones in cemeteries. The publication was intended to serve as an advertisement of the plaintiff's business, and to enable customers to whom it was given to select designs to be executed by the plaintiff, yet the court held it to be a proper subject of copyright.

Cobbett v. Woodward.

In the case of *Cobbett* v. *Woodward* (*h*), the plaintiff was an extensive dealer in upholstery and house furniture, and had published and registered an illustrated guide for furnishing houses, and circulated it as an advertisement of his business. The defendant, who was engaged in the same line of business, copied fifty-five of the illustrations and a large portion of the text. In defence it was contended that the plaintiff's book was a mere advertisement, and was, therefore, not within the Copyright Act. The court held that the drawings in the plaintiff's book were not entitled to protection, on the ground that they were mere advertisements. With regard to the

Illustrated furniture guide, copyright in.

(*a*) *Walter* v. *Lane* (1900). A. C. 539.
(*b*) *Wyatt* v. *Barnard* (1814). 3 V. & B. 77.
(*c*) *Kenrick* v. *Danube Collieries* (1891). 39 W. R. 173.
(*d*) *Trade Auxiliary Co.* v. *Middlesbrough, &c.* (1889). 40 Ch. D. 425 : *Cate* v. *Devon, &c., Newspaper Co. ib.* 500.
(*e*) *Orr* v. *Land & Water* (1869). L. R. 9 Eq. 321. See *Exchange Telegraph Co.* v. *Gregory* (1896). 1 Q. B. 147.
(*f*) (1859). 1 H. & M. 603 : 32 L. J. (Ch.) 771 : 11 W. R. 931 : 9 L. T. (N.S.) 199. So there may be copyright in a descriptive catalogue of tricks and magical apparatus : *Bland* v. *Hiam*, 'Times,' 15th Jan. 1873
(*g*) (1875). L. R. 19 Eq. 623 ; see also *Hogg* v. *Scott*, 18 Id. 444 ; *Callender* v. *Griffith*, 11 Blatchf. (Amer.) 212.
(*h*) (1874). L. R. 11 Eq. 407.

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text, a distinction was drawn between that part "which bears the trace of original composition," and that which "simply describes the contents of a warehouse, the exertions of the proprietors, or the common mode of using familiar articles." The court held that matter of the latter kind was not entitled to protection: but that the plaintiff was entitled to an injunction restraining the defendant from publishing about sixty words of "original composition" which had been copied. In the case referred to, Lord Romilly considered that the distinction between directories, concordances, dictionaries, &c., and the work then in question was, that such works were compiled and published for the information and use of the public, and were bought by the public without any reference to individual benefit—nothing in the shape of advertisements of articles specified in the work forming a part of the work, whereas in the case before him the work was a mere advertisement for the sale of particular articles which any one might advertise for sale.

The distinction drawn in the above decision between the different sources from which the work may emanate is not sound. The question whether an author of a work is entitled to copyright therein, depends neither upon the vocation of the author nor the purpose for which he has designed or may use it, but on the character, the inherent qualities of the production itself.

Cobbett v. *Woodward* overruled.

The case of *Cobbett* v. *Woodward* was overruled by the Court of Appeal in *Maple* v. *Army and Navy Stores* (*a*). In that case the plaintiffs, who were upholsterers, published an illustrated catalogue of furniture, which was duly registered under the Copyright Acts as a book. The illustrations were engraved from the original drawings made by artists employed by the plaintiffs, but the work contained no letterpress of such a description as to be the subject of copyright, and it was not published for sale, but was used by the plaintiffs as an advertisement. The defendants published an illustrated catalogue, many of the illustrations in which were copied from those of the plaintiffs' book. It was held by the Court of Appeal (affirming the decision of Vice-Chancellor Hall) that the plaintiffs were entitled to an injunction restraining the defendants from publishing any catalogue containing illustrations copied from the plaintiffs' book, and it was further held that a collection of prints published together in a volume was a book within the meaning of the Copyright Acts and the

(*a*) (1882), 21 Ch. D. 369; 52 L. T. (Ch.) 67.

proper subject of copyright, though it contained no such letterpress as could be the subject of copyright, and it made no difference that the book was not published for sale, but only used as an advertisement.

The Master of the Rolls (Jessel) said: "I am of opinion that this catalogue is the subject of copyright and that the engravings are protected. In the first place it is a book, and so clearly comes within the words of the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2. There may be such things as picture books for those who cannot read letterpress. The preamble of the statute has been referred to, but it cannot restrict the enacting part of the statute if the enacting part is clear, and moreover the preamble can in no case have much effect unless it is itself clear. Here the enacting part is clear. 'The word book shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published, and the word copyright shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is herein applied.' . . . The case which has done all the mischief is *Cobbett* v. *Woodward*. The late Master of the Rolls there says: 'But at the last it always comes round to this, that in fact there is no copyright in an advertisement. If you copy the advertisement of another you do him no wrong, unless in so doing you lead the public to believe that you sell the articles of the person whose advertisement you copy.' I think that is not the law. I am not aware that the use to which a proprietor puts his book makes any difference in his rights. His copyright gives him the exclusive right of multiplying copies, and he may use them as he pleases. I think, therefore, that *Cobbett* v. *Woodward* will not bear legal examination." After referring to *Hotten* v. *Arthur* and *Grace* v. *Newman*, the Master of the Rolls continues: "The weight of authority then is against the doctrine that there cannot be copyright in a book issued as an advertisement, and I cannot see any principle in support of that doctrine. There would be difficulty in protecting these designs as engravings under the Act relating to engravings, it is easier to protect them as parts of a book (*a*). The defendants thought that the law allowed them to appropriate the results of other men's labours, and they call upon us for

(*a*) Registration of a book under the Act of 1842 in the name of the author of the letterpress does not confer any protection in respect of drawings, which are introduced into the book as illustrations and the art copyright in which is vested in other persons. *Petty* v. *Taylor* (1897), 1 Ch. 165.

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an indulgent construction of the Act in their favour. It is in my opinion the duty of the court to construe Acts of Parliament with a view to the furtherance of justice."

Lists of articles for sale.

In *Maple* v. *Junior Army and Navy Stores*, it seems to have been assumed that the plaintiffs could not have had any copyright in the letterpress of their catalogue. The illustrations had artistic merit, but it apparently never occurred to the parties that there might have been sufficient literary merit in the letterpress to entitle it to copyright. It has, however, been decided that copyright may exist in a mere list of articles for sale (*a*). In the case cited the plaintiff was a chemist and druggist who had prepared a catalogue of medicines and drugs sold by him under various headings and sub-headings, under which were arranged in alphabetical order a list of articles with their prices. The defendants inserted in their catalogue copies of the above-mentioned headings and lists, omitting two preparations only, and an injunction was granted against them. North, J., in delivering judgment in this case remarked: "It is said this is not the subject of copyright; and a distinction is made between copyright in a large catalogue by a clever author which gives a great deal of information and is interesting to persons who read it, and a catalogue like the plaintiffs', which is nothing whatever but a simple list of certain articles described by their common names, which every one is entitled to use in respect to them, with the addition of the price at which they are sold." . . . "For the purpose of making such a catalogue [as the plaintiffs'] one man sets to work in a proper manner. He incurs a good deal of trouble. He does what must take a good deal of time in preparing a full catalogue, such as either of these works I have before me. To some extent it might be done by his stock-taking, but there may be a good many articles in his catalogue which are not found in stock—articles which a man does not always keep—which he may be out of, or does not keep in stock, but obtains when he receives an order for them. In one way or another a man engaged in preparing a catalogue of this sort has incurred labour in its preparation, or it may be expense and trouble in its preparation, and has done it for the advantage of having his own catalogue. As compared with his neighbour, he is better off in that he has a catalogue, while his neighbour has not; and if the latter wants to be on

(*a*) *Collis* v. *Cater* (1898), 78 L. T. 613. The same has been held in Scotland. *Harpers Ld.* v. *Barry Henry & Co.* (1892), 20 Court Sess. Cas., 4th series (Rettie), 133; cf. *Cooper* v. *Stevens* (1893), 1 Ch. 567; *Marshall* v. *Bull* (1901), 85 L. T. 77.

a level with him, he must incur the same labour or expense and trouble."

Time tables.

A railway time table may be the subject of copyright, provided independent labour be bestowed upon it, and it is not merely a copy of official information (*a*).

Directories and advertisements.

There may also, clearly, be copyright in the headings and arrangement of a directory (*b*). In *Lamb* v. *Evans*, the question was raised whether there could be copyright in a collection of advertisements. Chitty, J., held that there could not (*c*), and there was no appeal from his decision upon this point, but in the Court of Appeal, Lindley, L.J., remarked: "As regards copyright, I rather think that Mr. Justice Chitty has not gone quite far enough. I do not myself see the difficulty in a publisher's having copyright in a sheet of advertisements. I do see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisement in another paper, which is absurd. But to say that it follows from that, that the proprietor, say of the 'Times,' has no copyright in a sheet of advertisements, so that he cannot restrain anybody from copying that sheet, appears to me a very different proposition. It is not necessary for me to decide it, and I do not decide it, as the plaintiff does not ask for an injunction larger than Mr. Justice Chitty has granted; but I doubt very much whether he has not been a little too cautious. . . . It appears to me that the learned judge has overlooked the difference between the right to publish a whole sheet of the paper and the right to publish a sentence out of the sheet (*d*). And in this opinion Bowen, L.J., concurred (*e*).

No copyright in diagrams, &c.

Though, as we have seen, the Courts will not enter into a discussion as to the merits of a literary production, yet that which it is sought to protect as a book must be something which can be fairly described as a literary production of some sort. Thus, the Court has refused to grant copyright in respect of a cardboard pattern sleeve containing upon it scales, figures, and descriptive words for adapting it to sleeves of any dimensions (*f*); in respect of a list of sporting selections (*g*);

(*a*) *Leslie* v. *Young* (1894). A. C. 335.

(*b*) *Lamb* v. *Evans* (1893). 1 Ch. 218; *Kelly* v. *Morris* (1866). L. R. 1 Eq. 697; *Morris* v. *Ashbee* (1868). L. R. 7 Eq. 34.

(*c*) (1892). 3 Ch. 462.

(*d*) (1893). 1 Ch. p. 223.

(*e*) *Ib.* p. 228.

(*f*) *Hollinrake* v. *Truswell* (1894). 1 Ch. 420, followed *Bovey* v. *Wright* (1900). 1 Ch. 122. The contrary seems to have been held in America. *Drury* v. *Ewing* 1 Bond (Amer.) 540; but see *Baker* v. *Selden*, 110 Otto's Rep. (Amer.) 99; *Seaville* v. *Tidand*, 6 West. Law Jour. 84; *Higgins* v. *Keuffel*, 33 Davis Rep. (Amer.) 128.

(*g*) *Chilton* v. *Progress Printing Co.* (1895). 2 Ch. 29: 71 L. T. 661: 43 W. R. 136: *Fournat* v. *Pearson* (1897). 14 Times L. R. 82.

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or a scoring sheet or "tablet" used in the game of cricket (*a*).

Album for holding photographs not a book.

So an album for holding photographs with pictorial borders for containing views of castles, with short descriptions attached, is *not* a "book" *within* 5 & 6 Vict. c. 4, s. 41, so as to be capable of obtaining copyright for the contents. An album thus illustrated was entitled by the plaintiff, who claimed to have been the first inventor, the "Castle Album," and had been sold by him under that name since 1883, when the work was registered by him under 5 & 6 Vict. c. 45, and the illustrations under the Act of 1862; and it was held that the plaintiff could not by registration obtain copyright for the mere name "Castle Album," he had not in the absence of distinct evidence that such name had become generally accepted in the market as exclusively denoting the plaintiff's album, acquired any exclusive right to the name as a trade name, so as to be able to restrain the use of it by others to describe their albums similarly illustrated, but not shown to be printed from that of the plaintiff (*b*).

Face of a barometer not entitled to copyright.

So the face of a barometer, displaying special letterpress, was held not to be capable of copyright (*c*).

Gloved hand printed on card with letterpress entitled to copyright.

But a gloved hand printed on a card cut to the exact size, and showing the back and palm of the hand, the card opening bookwise, and having on the inside in the palm of a hand the lines of life of palmistry, and on the back of the hand some original verses, was held to be a sheet of letterpress and the proper subject of copyright (*d*).

No copyright in a mere plan.

There can be no copyright in the mere plan of a work; nor any exclusive property in a general subject or in the particular method of treating it (*e*). Any number of persons may use the same common materials, in a like manner and for a similar purpose. Their productions may contain the same thoughts and ideas: and resemblance to each other is immaterial so long as there is no unlawful copying.

Copyright in words used for telegraphy.

There may be copyright in the system of electric telegraphy in which every letter of the alphabet is expressed by a dot or a dash, or different combinations of dots and dashes, with

(*a*) *Page* v. *Wisden* (1869), 20 L. T. 135; *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. 99.

(*b*) *Schove* v. *Schmincke* (1886), 33 Ch. D. 546; 55 L. J. Ch. 892; 55 L. T. 212; 31 W. R. 700.

(*c*) *Davis & Co.* v. *Comitti* (1885), 54 L. J. Ch. 119; 52 L. T. 539; W. N. (1885), 15; 1 T. L. R. 216.

(*d*) *Hildesheimer & Faulkner* v. *Dunn & Co.*, 64 L. T. 152; W. N. (1891) 66; but see *Cable* v. *Marks* (1882), 52 L. J. Ch. 107; 47 L. T. 132.

(*e*) *Perris* v. *Hexamer*, 9 Ohio Rep. (Amer.) 671.

certain pauses between them, the meaning of these dots and dashes differing according to the place where the pause between them is made or its duration (*a*).

Copyright in newspaper telegrams.

There can of course be copyright in newspaper telegrams. A case came before the Supreme Court in Melbourne in which it appeared that the proprietors of the 'Melbourne Argus' paid a large sum for the purpose of obtaining the latest telegrams from Europe, and any newspaper proprietors who might wish to publish the telegrams so obtained could do so by paying a contribution towards the expenses incurred. The proprietor of the 'Gippsland Mercury' made an agreement to pay for the right of republishing the telegrams, but after carrying out the arrangements for some months cancelled the agreement. The European telegrams received by the 'Argus' were, however, re-published in another form, as from a Melbourne correspondent of the 'Mercury,' with the preliminary words "It is reported," or "The news about town is." This was considered a breach of the copyright which the proprietors of the 'Argus' possessed in the telegrams, and a suit was instituted in the Equity Court to restrain the proprietor of the 'Mercury' from re-publishing the telegrams. It was argued for the defendant that, as the telegrams were matters of news, any one could re-publish them without breach of the Copyright Act; but Mr. Justice Molesworth held that the plaintiff had a property in the telegrams, and that no one could re-publish them without the permission of the person to whom they had been sent in the first instance. An injunction was, therefore, granted to restrain the defendant from publishing the telegrams (*b*).

How far new editions the subject of copyright.

Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject for copyright. A new edition of a book may be a reprint of the original edition, which does not entitle the author to a new term of copyright running from the new edition; or it may be so enlarged and improved as to constitute in reality a new work; for example, a scientific work twenty or thirty years old may be comparatively worthless, owing to the progress of science in the interval: but a new edition, particularly if it be the production of the original author, would be as valuable at a later period as the original edition of the book was at the time it was published. There are many courses which lie between

(*a*) *Ager* v. *Peninsular & Oriental Steam Navigation Co.* (1881), 26 Ch. D. 637, followed in *Ager* v. *Gillingridge* (1886), 2 T. L. R. 291.

(*b*) See also *Walter* v. *Steinkopff* (1892), 3 Ch. 489; *Exchange Telegraph Co.* v. *Central News* (1897), 2 Ch. 48, and Chapter 'Newspapers,' post.

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the two extremes, and the difficulty would be to lay down any general rule as to what amount of additions, alterations, or new matter would entitle the second or new edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined to the additions and improvements themselves as distinguished from the rest of the book (*a*).

The general rule is, that each successive edition, which is substantially different from the preceding ones, or which contains new matter of substantial amount or value, becomes entitled to copyright as a new work, and it is immaterial whether the new edition is produced by condensing, expanding, correcting, re-writing, or otherwise altering the original work; or by introducing notes, citations, or other additions. Nor is it essential that the new edition should be an improvement on the old, the sole question is whether it is substantially different. A few mere colourable alterations in the text or the addition of a few unimportant notes will not be enough to sustain copyright as in a new work. As Lord Kinloch said in *Black* v. *Murray* (*b*), to create a copyright by alterations of the text, these must be extensive and substantial, practically making a new book. With regard to notes, in like manner, they must exhibit an addition to the work which is not superficial or colourable, but imparts to the book a true and real value, over and above that belonging to the text. This value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special account of these notes. There is involved in such annotation, and often in a very eminent degree, an exercise of intellect and an application of learning which place the annotator in the position and character of author in the proper sense of the word. It will still of course remain open to publish the text, which *ex hypothesi* is the same as in the original edition. But to take and publish the notes will be a clear infringement of copyright.

An action was raised in the Scotch Court of Session at the instance of Messrs. Black against Messrs. Murray and Son for a breach of copyright, and the infringement was said to be contained in a book published by the defenders in 1869, which

(*a*) 9 Sc. Sess. Cas. 3rd Ser. 341; *Hedderwick* v. *Griffin*, 3 Sc. Sess. Cas. 2nd Ser. 383. See *Thomas* v. *Turner* (1886), 33 Ch. D. 292; 56 L. J. Ch. 56; 55 L. T. 531; 35 W. R. 177 (C.A.); *Hutchons* v. *Sheard*, W. N. (1881), 20.

(*b*) 9 Sc. Sess. Cas. 3rd Ser. 341; *Hedderwick* v. *Griffin*, 3 Sc. Sess. Cas. 2nd Ser. 383. See *Thomas* v. *Turner* (1886), 33 Ch. D. 292; 56 L. J. Ch. 56; 55 L. T. 531; 35 W. R. 177 (C.A.)

purported to be an edition of the 'Minstrelsy of the Scottish Border,' collected by Sir Walter Scott, and it was stated in the title-page to be a reprint of the original edition. The peculiarity of the case was that the original edition of the 'Minstrelsy of the Scottish Border' was no longer protected by copyright; and therefore, if the book was what its title represented it to be, a mere reprint of the original edition, the complaint of the pursuers could not be maintained. But they alleged that this was a false pretence on the face of the title-page, and that while all the poems and ballads contained in the original edition of the 'Minstrelsy' were reproduced in this volume, there was a considerable amount of other matter borrowed from works the copyright of which had not expired. The Lord President said that in the first complaint the pursuers alleged that the defenders had illegally copied and pirated from the copyright edition of the 'Minstrelsy of the Scottish Border' the advertisement, or part thereof, prepared by Mr. John Gibson Lockhart, and that they had printed the same, or part thereof, as a preface to their volume, and, further, that they had copied from the 'Minstrelsy' the notes, quotations, illustrations, and references, or the essential parts thereof. The defenders could have no excuse, if this were the case, for it was distinctly stated in that advertisement that this copyright edition contained matter which was not to be found in the original edition. That there might be a copyright of notes, even when the text was not copyright, was a fixed principle in law, and most deservedly so; for there was no doubt that the addition of good notes to a standard work was a task worthy of the highest literary talent and reputation; and it must be remembered that Mr. Lockhart stood in a position of peculiar advantage as the editor and annotator of Sir Walter Scott's works, being his son-in-law and literary executor, and having opportunities during the lifetime of Sir Walter Scott to collect materials for the performance of such a task. His lordship, after quoting numerous passages, said there was no doubt that the editor of the defenders' book of 1869 had copied these notes of Mr. Lockhart in the most slavish manner, without even verifying or attempting to make them more accurate than Mr. Lockhart's. It was quite clear to his mind that there had been an appropriation of original matter and quotations, and therefore he held that this part of the pursuers' case had been completely made out. In the said complaint it was alleged that the defender had used notes from 'Old Mortality' with reference to the skirmish of Drumclog, and a letter written by

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Claverhouse to the Earl of Linlithgow, and also a description of the Battle of Drumclog, on Loudon-hill. He was of opinion that the note with the reference to the Battle of Drumclog stood in the same position as the notes to the 'Minstrelsy,' and there again he held that piracy had been committed. In regard to the next complaint—that the defender had copied from volume 8 of the poetical works, containing the 'Lady of the Lake' and other poems, and an account of the 'Massacre of Glencoe'—he was of opinion that there had been the same kind of piracy as in the notes to the 'Minstrelsy.' The Court granted costs to the plaintiffs (*c*).

Copyright in each edition.

The copyright in each edition will extend from the date of that edition, and will be wholly independent of the copyright in any preceding one (*b*). Copyright may be obtained for any number of editions and it is immaterial whether copyright has existed or not in any previous one, but, *semble*, copyright in one edition will cover subsequent editions, except as regards new matter (*c*). And though no person but the proprietor of the copyright may bring out a new edition of the work, supposing the copyright to be subsisting, without his consent; yet if the work be not protected there is nothing to prevent any person from bringing out a new edition of the work and obtaining a valid copyright therein.

Copyright in private letters.

The copyright of private letters forming literary compositions is, prior to publication, in the composer, and not in the receiver, who has only a special property in them; "possibly the property of the paper may belong to him, but this does not give a licence to any person whatever to publish them to the world, for at most the receiver has but a joint property with the writer" (*d*). The right of the writer of the letter to prevent its publication is not founded on considerations of policy or social ethics, but on the principle of property. "The question will be," said Lord Eldon, "whether the bill has stated facts of which the court can take notice as a case

(*a*) *Black* v. *Murray*, Sol. Journ. Dec. 31, 1870.

(*b*) See *Murray* v. *Bogue* (1852), 1 Dr. 353. 365.

(*c*) *Hutchins* v. *Sheard*, W. N. (1881), p. 20.

(*d*) *Per* Lord Hardwicke, *Pope* v. *Curl* (1741), 2 Atk. 342; *Perceval* v. *Phipps* (1813), 2 V. & B. 19; *Forrester* v. *Walker* (1741), 4 Burr. 2331; *Webb* v. *Rose*, *ibid.* 2330; *Macklin* v. *Richardson* (1770), Amb. 694; *Duke of Queensberry* v. *Shebbeare* (1758), 2 Eden. 329; *Millar* v. *Taylor* (1769), 4 Burr. 2303; *Donaldson* v. *Becket* (1774), 2 Bro. P. C. 129; *Oliver* v. *Oliver* (1861), 11 C. B. (N.S.) 139; *Cadell* v. *Stewart*, Mor. Dict. of Dec. vols. 19, 20. App., Lit. Prop. 13; *Palin* v. *Gathercole* (8144), 1 Coll. C. C. 565; *Folsom* v. *Marsh*, 2 Story (Amer.) 100; *Boosey* v. *Jefferys* (1851), 6 Exch. 583, *per* Lord Campbell. *E. of Lytton* v. *Devey* (1884), 52 L. T. 121, where the executrix of a person to whom letters were sent was restrained from publishing them on the application of the executor of the writer. See *Hopkinson* v. *Lord Burghley* (1867), L. R. 2 Ch. 447, and *Hess* v. *Labouchere* (1898), 77 L. T. 559, where North, J., reviewed the earlier authorities.

of civil property which it is bound to protect. The injunction cannot be maintained on any principle of this sort, that if a letter has been written in the way of friendship, either the continuance or the discontinuance of that friendship affords a reason for the interference of the court" (*a*). If a letter by any means gets back into the hands of the sender the receiver is entitled to recover it from him by action. In *Oliver* v. *Oliver* the facts were as follows. The plaintiff and defendant were brothers. The letters for the recovery of which the action was brought, related to family affairs. They were written and sent by the defendant to the plaintiff,—had been given back by the plaintiff to the defendant, and proof was given of a demand and refusal to restore them. There was contradictory evidence as to whether the letters had been given by the plaintiff to the defendant to be kept by him as his own property, or whether they had been merely handed to the defendant as custodian, to be re-delivered to the plaintiff on request. The learned judge told the jury that the receiver of a letter had such a property in the paper as to entitle him to maintain an action against the sender, if, by any means, it got back into his hands; and that it was for them to say whether the letters in question had been given to the defendant that he might retain them as his own property, in which case the defendant would be entitled to their verdict, or whether they were merely deposited with him to take care of them for the plaintiff, in which case the latter would be entitled to the verdict. Erle, C.J., in refusing a rule for a new trial, upheld this direction, and said: "In the case of letters, the paper at least becomes the property of the persons receiving them. Of course it is necessary to distinguish between the property in the paper and the copyright. The former is in the receiver, the latter is in the writer" (*b*).

The letters of Pope (*c*), Swift, and others, and the letters of Lord Chesterfield (*d*), were prevented from a surreptitious and unauthorised publication by injunction, on the ground of copyright in their authors. Lord Hardwicke, in *Pope's Case*, thought it would be extremely mischievous to draw a distinction between a book of letters, which came out into the world either by the permission of the writer or the receiver of them,

(*a*) *Gee* v. *Pritchard* (1818), 2 Swans. 413, 19 R. R. 86.

(*b*) See *Honeard* v. *Gunn* (1863), 32 Beav. 162. 2 N. R. 256. North, J., in *Labouchere* v. *Hess* (1898), L. T. 559, p. 562, did not consider it clearly established by the cases that the property in the paper is in the receiver.

(*c*) *Pope* v. *Curl* (1741), 2 Atk. 342.

(*d*) *Thompson* v. *Stanhope* (1774), Amb. 737.

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and any other learned work. The same objection would, he thought, hold good against sermons which the author may never have intended to be published, but which had been obtained from loose papers and brought out after his death.

In the case of the *Earl of Granard* v. *Dunkin* (*a*) the executors of Lady Tyrawley obtained an injunction in the first instance against the defendant publishing letters to Lady Tyrawley from different correspondents, which he had got possession of by being permitted to reside in her house, and continuing to do so after her death. In 1804 the Court of Session in Scotland interdicted, at the instance of the children, the publication of the manuscript letters of the poet Burns (*b*).

Distinction between commercial or friendly letters and literary compositions.

In the case of *Perceval* v. *Phipps*, though the Vice-Chancellor, Sir Thomas Plumer, held that private letters having the character of literary compositions were within the spirit of the Act protecting literary property, and that by sending a letter the writer did not give the receiver the right to publish it, yet the court would not interfere to restrain the publication of *commercial* or *friendly letters*, except under circumstances (*c*); "for," said he, "though the form of familiar letters might not prevent their approaching the character of literary works, every private letter, upon any subject, to any person, is not to be described as a literary work, to be protected upon the principle of copyright. The ordinary use of correspondence by letters is to carry on the intercourse of life between persons at a distance from each other in the prosecution of commercial or other business, which it would be very extraordinary to describe as a literary work in which the writers have a copyright" (*d*).

No such distinction at the present time admitted.

Non nostrum est tantas componere lites; yet this distinction appears to us to have but little foundation, and seems to have existed merely in the imagination of Sir Thomas Plumer. It is true that a court of equity cannot interfere to prevent the publication of private letters simply on the ground that such

(*a*) (1809). 1 Ball & Beattie, 207 : 12 R. R. 18.

(*b*) *Cadell & Davies* v. *Stewart* (1804), cited 1 Bell's Com. 116, n., cited 2 Kent's Com. 381.

(*c*) (1813) 2 V. & B. 19 : 13 R. R. 1 ; see *Wetmore* v. *Scoville*, 3 Edw. Ch. (Amer.) 515 : *Hoyt* v. *Mackenzie*, 3 Barb. Ch. (Amer.) 320 ; but see *Woolsey* v. *Judd*, 4 Duer (N. York) 379 ; and *Eyre* v. *Higbie*, 35 Barb. (N. York) 502.

(*d*) "Another class is the correspondence between friends or relations, upon their private concerns ; and it is not necessary here to determine how far such letters falling into the hands of executors, assignees of bankrupts, &c., could be made public in a way that must frequently be very injurious to the feelings of individuals. I do not mean to say that would afford a ground for a Court of Equity to interpose to prevent a breach of that sort of confidence independent of contract and property." *Perceval* v. *Phipps* (1813). 2 V. & B. 19 ; 13 R. R. 1.

a publication, without the consent of the writer, as a breach of confidence, and social duty, is injurious to the interests of society; but solely on the ground that the writer has an exclusive property which remains in him, even where the letters have been transmitted to the person to whom they were addressed. A court of equity is not the general guardian of the morals of society. It has not an unlimited authority to enforce the performance or prevent the violation of every moral duty. It would be extravagant to say that it may restrain by an injunction the perpetration of every act which it may judge to be corrupt in its motives or demoralising or dangerous in its tendency. An injunction can never be granted unless it is apparent to the court that the personal legal rights of the party who seeks its aid are in danger of violation, and, as a general rule, that the injury to result to him from such violation, if not prevented, will be irreparable.

Motives why no distinction should be drawn.

The sole foundation is the right which every man has to the exclusive possession and control of the product of his own labour. Why should a writing of inferior composition be precluded from being a subject of property (*a*)? To establish a rule that the quality of a composition must be weighed previous to investing it with the title of property, would be forming a very dangerous precedent. What reason can be assigned why the illiterate and badly spelt letters of an uneducated person should not be as much the subject of property as the elegant and learned epistles of a well-known author? The essence of the existence of the property is the labour used in the concoction of the composition, and the reduction of ideas into a tangible and substantial form; and can it be contended that the labour is less in the former than the latter case? Every letter is, in the general and proper acceptation of the term, a literary composition. It is that, and nothing else; and it is so, however defective it may be in sense, grammar, or orthography. Every writing in which words are so arranged as to convey the thoughts of the writer to the mind of the reader is a literary composition; and the definition applies just as certainly to a trivial letter as to an elaborate treatise or a finished poem. Literary compositions differ widely in their merits and value, but not at all in the facts from which they derive their common sense (*b*).

(*a*) School books for teaching children are entitled to protection. See *Lennie* v. *Pillans*, 5 Sess. Cas. 2nd series, 116; *Constable & Co* v. *Brewster*, 3 Sess. Cas. 215 (N. E. 152). So are abstracts and indices of title to land, so long as the compiler retains the ownership of the unpublished manuscript: *Banker* v. *Caldwell*, 3 Min. (Amer.) 94. (*b*) 2 Story's Rep., cited *Woolsey* v. *Judd*, 4 Duer (N. York) 379.

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Printing and publishing cannot make a book "literary" which was not so in manuscript: and consequently, the author of a book (for the same doctrine would apply to a book as to a private letter) which may be of a private nature, and not considered as "a literary composition," ought to be excluded from the benefit of the Acts conferring copyright. But it cannot be contended that the copyright of an author is to be liable to impeachment and frustration by reason of an inquiry into the merits or value of his work as published (*a*).

The author's right of property alone protected by the Court.

The exclusive right which alone a court of equity is bound to protect, and which from its nature can only be protected by an injunction, is the author's right of property in the words, thoughts, and sentiments which, in their connection, form the written composition—which his manuscript embodies and preserves. This composition—whether, as such, it has any value or not, is immaterial—is his work, the product of his own labour, of his hand, and his mind; and it is this fact which gives him the right to say that, without his consent, it shall not be published, and makes it the duty of a court of equity to protect him in the assertion of that right by a permanent injunction. Of this it is a conclusive proof that the right to control the publication of a manuscript remains in the author and his representatives, even when the material property has, with his own consent, been vested in another. The gift of the manuscript, it is settled, unless by an express or implied agreement, carries with it no licence to publish (*b*).

Lord Eldon's opinion of the case of Perceval v. Phipps.

Lord Eldon intimates in *Gee* v. *Pritchard* (*c*) that he does not understand the Vice-Chancellor, in the case of *Perceval* v. *Phipps*, as denying the property of the writer in the letters, but that he appears to have inferred, from the particular circumstances of that case, that the plaintiff had authorized, and for that reason could not complain of, the publication. "I will not say," he adds, "that there may not be a case of exception, but if there is, the exception must be established on examination of the letters; and I think that it will be extremely difficult to say where that distinction is to be found

(*a*) *Walter* v. *Lane* (1900), A. C. 539.

(*b*) *Duke of Queensberry* v. *Shebbeare* (1758), 2 Eden. 329: *Thompson* v. *Stanhope* (1774), Amb. 737: *Randell* v. *Murray* (1821), Jac. Rep.: 23 R. R. 75: *Cooper* v. *Stephens* (1895), 1 Ch. 567, and see *per* Lindley, L.J., *Walter* v. *Lane* (1899), 2 Ch. at p. 770. But, apparently, the executors of a writer may authorise the publication of letters written by their testator, though the latter never intended them for publication. *Dodsley* v. *M'Farquhar*, Mor. Dict. of Dec., Lit. Prop., App. 1, 5. *Quære*, whether a licence to publish implied by a gift of a MS. would be exclusive. *Randell* v. *Murray*, *supra*.

(*c*) (1818), 2 Swans. 118, 126, 127. See *Brandreth* v. *Lance*, 8 Paige's R. (Amer.) 24, 26.

between private letters of one nature and private letters of another nature."

Mr. Story's opinion.

Mr. Justice Story strongly asserts the propriety of the jurisdiction by injunction for the purpose of restraining the publication of private letters. He thinks the doctrine but sound and just that a court of equity ought to interfere where a letter, from its very nature, as in the case of matters of business, or friendship, or advice, or family or private confidence, imports the implied or necessary intention and duty of privacy and secrecy; or where the publication would be a violation of *trust* or *confidence* founded in contract, or implied from circumstances (*a*). Cicero has with great force thus spoken of the grossness of such offences against common decency: "*Quis enim unquam, qui paulum modo bonorum consuetudinem nosset, literas, ad se ab amico missas, offensione aliquâ interpositâ, in medium protulit, palamque recitavit? Quid est aliud tollere e vitâ vitæ societatem, tollere amicorum colloquia absentium? Quam multa joca solent esse in epistolis, quæ, prolata si sint, inepta videantur! Quam multa scripta, neque tamen ullo modo divulganda!*" (*b*).

Principles on which the determinations of the Court of Session have proceeded.

With these natural feelings on the breach of epistolary confidence the determinations of the Court of Session in Scotland have accorded (*c*); but it must be borne in mind that that court is held to have jurisdiction by interdict to protect, not property only, but reputation from injury, and private feelings from outrage and invasion (*d*).

Ground on which a court of equity will frequently interfere.

Courts of equity will, notwithstanding what we have already intimated, sometimes interfere to stay the publication of letters, on the ground that the publication is a *breach of contract* or *confidence*; and *à fortiori*, when they are intended to be made a source of *profit*; for then it is not a mere breach of confidence or contract, but it is a violation of the exclusive copyright of the writer.

Thus, upon the principle of *breach of contract*, an injunction was granted to prevent the publication of letters written by an old lady to a young man, to whom she had been foolishly

(*a*) Story's Com. on Eq. Jur. ss. 947–949.

(*b*) Cic. *Orat. Philipp.* ii. c. 4. See Sir S. Romilly, 2 Swans. 419.

(*c*) So it was held in *Dodsley* v. *M'Farquhar*, Feb. 27, 1775. relative to the publication of Lord Chesterfield's Letters: Mor. Dict. of Dec., Lit. Prop., App. 1. 5; Br. Sup. 509; and again more solemnly in *Cadell and Davies* v. *Stewart*, June 1, 1804, Mor. Dict. of Dec., Lit. Prop., App. 4. *Ibid.* But see, 5 Pat. 493. Here letters written by Burns to a lady whom he distinguished by the name of *Clarinda*, had been by her given to Stewart, a bookseller, who published them. The family of Burns, as interested in his literary reputation, were found entitled to an interdict: Bell's Com.

(*d*) Bell's Com. b. 2, pt. 2, c. 4.

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attached, there being an agreement not to publish the letters, but to deliver them up for a valuable consideration (*a*).

Were the court to interfere on any other principle than that already stated, individuals would be deprived of their defence in proving agency, orders for goods, the truth of an assertion, or some other fact, merely because the testimony establishing the true and genuine circumstances was contained in letters in which a pretended copyright was claimed (*b*).

Instances in which the publication of private letters has been permitted.

Accordingly an injunction obtained on account of agency and confidence was dissolved by the court when the answer denied confidence, and avowed that the defendant's object in publishing them in a newspaper, of which he was the proprietor, was not to obtain profit, but to *vindicate his own character* from the imputation of having published false intelligence publicly cast on him by the plaintiff; for defective and injurious indeed would be the effect of a law permitting not the publication or production of business letters when necessary for one's own defence (*c*).

Not permissible for the purpose of representing that to be true which has been admitted to be false.

The receiver of a letter, however, will not be permitted to publish it for the purpose of representing to the public as true that which he has, in legal proceedings upon that very question, admitted to be false. The case of *Palin* v. *Gathercole* (*d*) elucidated this point. The circumstances of that case were these: Palin, the plaintiff, had written to Gathercole, the defendant, who was the editor of a newspaper, certain letters containing information respecting one Noakes, and Gathercole from these letters drew up an article which he published in his newspaper. Noakes brought an action against him for libel, and he compromised the action, paying Noakes' costs, and apologising. Gathercole then claimed of Palin half the costs that he, Gathercole, had so incurred, and Palin refusing to pay them, Gathercole published in his newspaper a statement that the libel upon Noakes was communicated to him, Gathercole, by Palin. Palin thereupon brought an action against Gathercole; and Gathercole pleaded that the matter, however libellous as between Noakes and Gathercole, was matter of which, as between Palin and Gathercole, Palin was the author; but

(*a*) *Anon.* v. *Eaton*, cited 2 V. & B. 27; *Perceval* v. *Phipps* (1813), 2 V. & B. 27; *Earl of Granard* v. *Dunkin* (1809), 1 Ball. & B. 247; Story's Eq. Jur. vol. 2, ss. 944–950; *Denis* v. *Laclere*, 1 Martin (Amer.), 297; *Woolsey* v. *Judd*, 4 Duer. (N. York) 379; *Eyre* v. *Higbie*, 35 Barb. (N. York) 502

(*b*) See Godson on Copy. p. 330.

(*c*) *Folsom* v. *Marsh*, 2 Story (Amer.) 100; see *Howard* v. *Gunn* (1863), 32 Beav. 162, and *E. of Lytton* v. *Devey* (1884), 52 L. T. 121, and *Labouchere* v. *Hess* (1898), 77 L. T. 559, where the defence of vindication of character was held not to be made out.

(*d*) (1811), 1 Coll. C. C. 565.

before trial Gathercole submitted to what was, in effect, a general verdict, establishing in substance, as Vice-Chancellor Knight Bruce expressed it in his judgment, that the libel published by Gathercole on Noakes was not a libel which Palin had communicated to Gathercole. Gathercole then proceeded to show Palin's letters to third persons, upon which Palin filed his bill for an injunction to restrain Gathercole from publishing or showing the letters, and obtained an *ex parte* injunction. The use which Gathercole desired to make of the letters was, it will be observed, to establish the fact that Palin was the author of the libel upon Noakes, the very fact which he had, by submitting to the general verdict in Palin's action, admitted not to exist. Under those circumstances, the court refused to dissolve the injunction, permitting, however, the defendant to exhibit the letters to his solicitors and counsel in the cause.

Communications sent to editors of periodicals.

Communications received from correspondents by editors or proprietors of periodical publications (if sent impliedly or expressly for the purpose of publication) become the property of the person to whom they are directed, and cannot be published by any other person obtaining possession of them (*a*). The editor or proprietor, however, of any such periodical may not publish them if, previous to publication, the writer expresses his desire to withdraw them (*b*); but though the editor may not publish them he is not bound to preserve them for the benefit of the writers, but may destroy them.

What is a publication of private letters?

To make any public use of the production is to publish it. Hence a letter may be published not only by printing it, but also by reading it in public, or by circulating copies of it, though such copies be in manuscript. Any such public use of the letter, without the consent of the writer, is a violation of his right. But the receiver may, if he wish, destroy the letter as soon as received, and there is nothing to prevent him giving them to another, or reading them to others, or lending them to others to be read, provided such reading or lending does not amount to a publication: and in *Yates* v. *Hesse* (*c*). North J., while granting an injunction restraining the publications of letters, refused an injunction restraining the defendant from informing any person of their contents.

Letters written by

Letters written by one person employed by another, and

(*a*) *Hogg* v. *Kirby* (1803). 8 Ves. 215: 7 R. R. 30. See Chapter. Newspapers, *post*.

(*b*) *Davis* v. *Miller*, July 28, 1855: 17 Dec. of Ct. of Sess. 2nd Series, 1166. See 1 Jur. (N.S.) pt. 2, 523.

(*c*) (1898). 77 L. T. 539.

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one person for or on behalf of another.

relating to the business affairs of the latter, will rightly be considered as the property of the employer who pays the writer for his services. Thus it has been held that the letters which an officer of an insurance company had written in the discharge of his official duties became the property of the company (*a*). "If the solicitor of an assurance company, established in London," said the Master of the Rolls in the case cited; "by the direction of the directors, wrote a letter to one of the shareholders in the country, it is clear that such letter is not the property of the solicitor, and that he cannot say that the company have not a right to publish it. Take it a step further, and assume that the solicitor wrote a letter, but not by the direction or on behalf of the directors, though it had all the appearance of being written on their behalf, and by their direction. Thus, if it were written to a person who proposed to take shares in the company, and it related to the affairs of the company, and contained authoritative information on behalf of the company in answer to an application for shares, and the person who receives it treats it as such, and sends back to the company, objecting to its contents, shall the solicitor be allowed to complain of its publication, and to insist that it is a private letter, though it appears to be written on behalf of the directors? The answer is, if that be so, it ought not to have been written. It has all the appearance of having being written by the plaintiff on their behalf, and Jamieson [the person to whom it was written] so treats it, for he writes to the manager in answer to it. Can the plaintiff be allowed to say that the company have no right to publish it? and if they have, is not the defendant entitled, as regards the plaintiff, to bring it forward? It is obvious that this was not a private letter, and was not intended to be a private letter."

Power of government to publish or withhold letters.

The government has, moreover, a right to publish or to withhold all letters addressed to the public offices (*b*). This exception in favour of the government is not supposed to make such communications common property, to be published by any person who may see fit, without the sanction of the government, nor to take away the property of the writers or their representatives. "In respect to official letters addressed to government," observed Mr. Justice Story in *Folsom* v. *Marsh* (*c*). "or any of its departments, by public officers, so far as the right of the government extends from principles of

(*a*) *Howard* v. *Gunn* (1863), 32 Beav. 462.
(*b*) Curtis on Copy. 98.
(*c*) 2 Story (Amer.) 100.

public policy to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful whether any public officer is at liberty to publish them, at least in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be right, and even the duty, of the government, to give them publicity, even against the will of the writers. But this is an exception in favour of the government, and stands upon principles allied to, or nearly similar to the right of private individuals, to whom letters are addressed by their agents, to use them, and publish them, upon fit and justifiable occasions. But assuming the right of the government to publish such official letters and papers, under its own sanction, and for public purposes, I am not prepared to admit that any private persons have a right to publish the same letters and papers without the sanction of the government for their own private profit and advantage. Recently the Duke of Wellington's despatches have, I believe, been published by an able editor, with the consent of the noble duke and under the sanction of the government. It would be a strange thing to say, that a compilation involving so much expense and so much labour to the editor in collecting and arranging the materials, might be pirated and republished by another bookseller, perhaps to the ruin of the original publisher and editor. Before my mind arrives at such a conclusion, I must have clear and positive lights to guide my judgment, or to bind me in point of authority."

Copyright in lectures and speeches.

Copyright may be had in lectures. Lectures are generally more or less literary productions—frequently the result of much thought and research. They are continually being published in the form of books and pamphlets—such publications being in many cases of great value, and it would be unjust and impolitic to deprive lecturers or other persons of the power of securing an exclusive right to their addresses, scarcely less so than to deprive authors generally of copyright in their productions. If a lecture has been reduced wholly or partially into writing, the author has clearly a right of property in it; and the court when called upon to restrain the publication of such a lecture, will compare the original composition with the piracy.

The admission of persons to hear such a lecture affords no

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presumption that the speaker intends to give them a right to publish the information they may acquire. When the lecture is orally delivered it is difficult to say that an injunction can be granted upon the same principle as that upon which an injunction is issued in the case of a literary composition; because the court must be satisfied that the publication complained of is an invasion of the original work. It does not, however, follow that because the information communicated by the lecturer is not committed to writing, but orally delivered, it is therefore within the power of the person who hears it to publish it (*a*). On the contrary, Lord Eldon, in *Abernethy* v. *Hutchinson*, observed that he was clearly of opinion that, whatever else might be done with it, the lecture could not be published for profit. When persons are admitted as pupils or otherwise to listen to lectures orally delivered, although they may go to the extent, if desirous and capable, of taking down the whole by means of shorthand, yet they can do that only for the purpose of their own information; they may not publish.

Injunction granted where lecture was oral only.

In the case of *Nichols* v. *Pitman* (*b*), the plaintiff, an author and lecturer upon various scientific subjects, delivered from memory, though it was in manuscript, a lecture at the Working Men's College upon "The Dog as the Friend of Man." The audience were admitted to the room by tickets issued gratuitously by the committee of the college. Mr. Pitman, the author of a system of shorthand writing and the publisher of works intended for instruction in the art of shorthand writing, attended the lecture and took notes nearly *verbatim* in shorthand of it, and afterwards published the lecture in his monthly periodical 'The Phonographic Lecturer.' On a motion for an injunction to restrain the publication, it was held that where a lecture of this kind is delivered to an audience, limited and admitted by tickets, the understanding between the lecturer and the audience is that, whether the lecture has been committed to writing beforehand or not, the audience are quite at liberty to take the fullest notes for their own personal purposes, but they are not at liberty to use them afterwards for the purpose of publishing the lecture for profit; and the publication of the lecture in shorthand characters is not regarded as being different in any material sense from any other, and an injunction was granted accordingly.

Lectures in university.

So where a professor of a university delivers orally in his

(*a*) *Per* Lord Eldon, in *Abernethy* v. *Hutchinson* (1825), 3 L. J. (Ch.) 209.
(*b*) (1884), 26 Ch. D. 374.

class-room lectures which are his own literary composition, no person is entitled to republish them without the permission of the author (*a*).

The Lecture Copyright Act, 5 & 6 Will. 4, c. 65.

But if a lecturer unconditionally publishes his lecture, then the only way in which he can protect his copyright is by taking advantage of the provisions of the 5 & 6 Will. 4, c. 65. This statute provides that, from and after the 1st of September, 1835, the author of any lecture (*b*), or the person to whom he has sold or otherwise conveyed the copy in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture; and that if any person shall, by taking down the same in shorthand, or otherwise in writing, or in any other way, obtain or make a copy of such lecture, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author has sold or otherwise conveyed the same, and every person who knowing the same to have been printed and copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture, shall forfeit such printed or otherwise copied lecture or parts thereof, and be liable to certain penalties. The 2nd section provides that any printer or publisher of any newspaper who shall without such leave as aforesaid print and publish in such newspaper any lecture shall be deemed to be a person printing and publishing without leave within the provisions of the Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing. The 3rd section declares that no person, allowed for a certain fee and reward or otherwise to attend and be present at any lecture delivered at any place, shall be deemed and taken to be licensed, or to have leave to print, copy, and publish such lecture on account merely of having permission to attend the delivery. The 4th section makes the period of copyright twenty-eight years.

Notice must be given to justices.

It is, however, a condition precedent to obtaining protection under this Act that two days previous notice in writing of the intention to deliver a lecture be given to two justices living within five miles of the place of delivery (*c*).

(*a*) *Caird* v. *Sime* (1887), 13 C. of Sess. Cas. 23: 12 A. C. 326; 57 L. T. P. C. 2; 57 L. T. 634: 3 T. L. R. 681. *Bartlett* v. *Crittenden*, 5 McLean (Amer.) 32.

(*b*) No doubt, including a speech. *Walter* v. *Lane* (1899), 2 Ch. 749, 754.

(*c*) Sect. 5. The notice must be given every time such lecture is delivered, and therefore the omission in any one instance to give the requisite notice would render

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In consequence of this provision few lectures are protected by this Act, for seldom is the requisite notice given. And, under this latter clause, it would appear that sermons delivered by clergymen of the Established Church, in endowed places of public worship, are deemed public property.

It is questionable whether copyright applies under this Act to lectures merely orally delivered even when reduced previously into writing; but with regard to speeches properly so called, or speeches not reduced into writing, there can be no doubt (*a*).

There is nothing in this statute to prevent any person from delivering in public an unpublished lecture without the consent of the author, it only prohibits the printing, copying, publishing, and exposing for sale, though the delivery would seem to be an infringement of the author's common law rights in the manuscript (*b*).

In France, the *cour royale* of Paris had before it in 1828 the interesting question whether, when a course of oral lectures is merely the reproduction of a work previously published by the professor, a person who publishes the lectures from notes taken by a stenographer, can be made responsible for a piracy to the publisher of the work thus reproduced, the decision of the question was given in the affirmative (*c*).

Reports of speeches, &c.

It has been decided that a reporter who attends a public meeting, and takes the speeches down in shorthand, may obtain copyright in his report (*d*); but if a speaker, speaking in a place from which he had power to exclude reporters, were to declare that he would not permit a report of his speech being taken, possibly a report might be restrained on the ground of breach of faith (*e*).

any person at liberty to obtain a copy, which the lecturer would be unable to prevent his publishing. Lectures delivered in any university, or public school, or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation, are also, by the same section, excepted from the Act.

(*a*) See 'Edinburgh Review,' October 1851.

(*b*) In an American case, *Keene* v. *Kimball*, 16 Gray (82 Mass.) 551, Hoar, J., said: "The student who attends a medical lecture may have a perfect right to remember as much as he can, and afterwards to use the information thus acquired in his own medical practice, or to communicate it to students or classes of his own, without involving the right to commit the lecture to writing, for the purpose of subsequent publication in print or by oral delivery. So any one of the audience at a concert or opera, may play a tune which his ears has enabled him to catch, or sing a song which he may carry away in his memory, for his own entertainment or that of others, for compensation or gratuitously, while he would have no right to copy or publish the musical composition." See *Caird* v. *Sime*, 13 C. of Sess. 23 (Sc.).

(*c*) See Renouard, tom. 2, p. 146, cited Curtis on Copy. 103.

(*d*) *Walter* v. *Lane* (1900), A. C. 539; 69 L. J. Ch. 699; 81 L. T. 571; 48 W. R. 228.

(*e*) The alterations in the law suggested by the report of theRoyal Commissioners on Copyright are set forth in the 84th and three following paragraphs.

They are of opinion that the author's copyright should extend to prevent

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Copyright in abridgments.

Copyright may likewise exist in a genuine and just abridgment, for it is said that an abridgment may with great propriety be called a new book (*a*). It has been held that an abridgment is not a piracy of the original work; but this matter will be more appropriately dealt with in the chapter on Infringement of Copyright (*b*).

What constitutes an abridgment.

To constitute a true and equitable abridgment the entire work must be preserved in its precise import and exact meaning, and then the act of abridgment is an exertion of the understanding, employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive, and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size of a work by copying some of its parts and omitting others, confers no title to authorship: and the result will not be an abridgment entitled to protection. To shorten a work by leaving out the unimportant parts is not to abridge it in a legal sense. To abridge in the legal sense of the word is to preserve the substance, the essence of the work, in language suited to such a purpose: language substantially different from that of the original. To make such an abridgment requires

re-delivery of a lecture without leave as well as publication by printing, though this prohibition as to re-delivery they consider should not extend to lectures which have been printed and published. They also recommended that the term of copyright in lectures should be the same as in books, namely, the life of the author and thirty years after his death.

"In the course of our inquiry," they report, "it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control, so as to prevent such publication if he wishes to do so; and we therefore suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

"By the present law, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known, and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest that this provision should be omitted from any future law.

"We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere wherein no statutory copyright can be acquired."

The commissioners also thought that in case of piracy either by publication or re-delivery without the author's consent, there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication or re-delivery. If the piracy were committed by printed publication they were of opinion that the author should also have power to seize copies (Para. 181). The recent Copyright Bill (1900) proposed to carry out these suggestions.

(*a*) Per *Lord Hardwicke*, *Gyles* v. *Wilcox* (1740), 2 Atk. 143.

(*b*) Chapter vi. *post*.

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the exercise of the mind; labour, skill, and judgment are brought into play, and the result is not merely copying.

Copyright in digests.

Copyright may also be had in a digest. A digest, or a compilation differs from an abridgment. A digest or a compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the works cited; the latter must adopt the arrangement of the work abridged to be a faithful abridgment. The former infringes the copyright if the matter transcribed when published impairs the value of the original book, while a fair abridgment, though it may injure the original, is, as we have seen, lawful.

Head-notes of reports.

The digest of a report, usually included in and known as the head-note, is a species of property which will receive protection. "The head-note, or the side or marginal note of a report," said Mr. Justice Crowder, in *Sweet* v. *Benning* (*a*), "is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principles of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within the same principle or rule of law or of practice." It may indeed be considered, perhaps, as in itself a species of brief and condensed report, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgment at length; and in the other, an abstract of the decision, conveying the principle upon which it is founded and the pith and substance of the case. But whether thus regarded, or viewed in the manner adopted by Mr. Justice Maule, in the above cited case, namely, in the nature of an independent deduction from the report, and a succinct statement of the legal principles involved, or of the doctrine of law established by the decision, there is a sufficient exertion of mental power in the formation to render it substantially a subject of copyright.

Selections from reports and judgments.

The right of selecting passages from books of reports (including entire judgments) in treatises upon particular subjects is not disputed. Had it been otherwise decided, the greater

(*a*) (1855), 16 C. B. 491; 1 Jur. (N.S.) 543. *Vide D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288, 301; 4 L. J. (N.S.) Ch. 21; but there Lord Lyndhurst referred to digests such as Viner's 'Abridgment' and Comyns' 'Digest.'

part of our law libraries would be much thinned and attenuated, and we should be deprived of many valuable works; for a considerable portion consists of mere transcripts from books of report (*a*).

What would become of the elaborate commentaries of modern scholars upon the classics, which, for the most part, consist of selections from the works and criticisms of various former authors, arranged in a new form, and combined together by new illustrations? What would become of the modern treatises upon astronomy, mathematics, natural philosophy and chemistry? What would become of the treatises in our own profession, the materials of which, if the work be of any real value, must essentially depend upon faithful abstracts from the reports, and from juridical treatises, with illustrations of their bearing. 'Blackstone's Commentaries' is but a compilation of the Laws of England drawn from authentic sources, open to the whole profession; and yet it was never deemed that it was not a work which, in the highest sense, might be considered an original work, since never before were the same materials so admirably combined and exquisitely wrought out, with a judgment, skill and taste absolutely unrivalled (*b*).

Copyright in forms or precedents.

In a Scotch case the validity of the complainant's copyright in a collection of legal forms or "styles" was questioned, on the ground that in preparing them he had simply followed the directions prescribed by the statute; and that under the circumstances the forms prepared by two or more persons must be substantially the same. The Court held that if the statute had contained the forms themselves and the complainant had simply copied them, his copyright would have failed through want of originality. But, as the statute gave simply directions, it was an act of authorship to prepare the forms pursuant to such directions (*c*). Lord Fullerton in the case referred to observed: "It is said that owing to the particular nature of the styles they cannot be the subject of copyright, because they are drawn up precisely after the form prescribed in the statute, and because any styles relating to the same subjects as those given by the complainer must, if the directions of the statutes and phraseology of conveyancers were used, be expressed in the same manner exactly as those proposed by the complainer. Now it may be quite true that

(*a*) See *Butterworth* v. *Robinson* (1801), 5 Ves. 709: Evans' 'Statutes,' 2nd ed. vol. 2, p. 25.

(*b*) Story, J., in *Gray* v. *Russell*, 1 Story (Amer.) 17.

(*c*) *Alexander* v. *Mackenzie*, 9 Sc. Sess. Cas. 2nd Ser. 748

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if the statute had supplied certain forms by which the operations intended to be thereby regulated were to be done, if the statute had contained, as such statutes sometimes do, an appendix exhibiting certain schedules of forms which it was only necessary for any one to copy in order to avail himself of the provisions of the Act, then I hold that the reprinting of such forms in a separate publication would not give him a copyright in these forms. But the case here is different, for the statute only gives very general directions and descriptions of the styles that are to be used. The schedules are very general in their terms, and it is no doubt of great practical importance to suit these general directions to each case falling under the statute as it may arise. The preparing and adjusting of such writings require much care and exertion of mind. As to invention, that is a different thing: it does not require the exercise of original or creative genius, but it requires industry and knowledge."

As to whether copyright may exist in a work not claiming originality in the doctrines contained therein.

We have already noticed that originality is not necessary to entitle a work to copyright. This is further illustrated by the case of *Jarrold* v. *Houlston* (*a*) respecting Dr. Brewer's 'Guide to Science,' in which work the author does not profess to have made any discovery in science, or to do more than to provide for the young and other persons who have not been in the habit of making observations for themselves, information by which some of the ordinary phenomena of common life may be explained to them on scientific principles, and that they may themselves be led to observe and to reflect upon those wonderful laws of nature, by which the most ordinary phenomena are governed. And it was determined that, if any one by pains and labour corrects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, and explanations of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of the questions so collected, with such answers, under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected.

(*a*) (1857), 3 K. & J. 708 : 3 Jur. (N.S.) 1051. As to the amount of originality required in a musical composition in America, see *Jollie* v. *Jaques*, 1 Blatch. (Amer.) 626. It has been there held that a good title to copyright is acquired by representing on a map boundaries of townships which are fixed by statute : *Farmer* v. *Calvert Lithographic Engraving and Map Publishing Co.*, 5 Am. L. T. R. 168.

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No copyright in that which has no present existence.

Copyright can only exist in respect of some already published or some composed and not yet published literary production. Therefore there can be no copyright in the prospective series of a newspaper. Copyright may attach upon each successive publication; but that which has no present existence as a composition cannot be the subject of this species of property (*a*).

The mere declaration of the intention to publish any articles bearing a particular name or mark, even though made public by registration at Stationers' Hall, cannot create a right to the exclusive use of such name or mark. So in the cases of *Maxwell* v. *Hogg*, and *Hogg* v. *Maxwell*. Messrs. Hogg, in 1863, registered an intended new magazine to be called 'Belgravia.' In 1866, such magazine not having appeared, Mr. Maxwell, in ignorance of what Messrs. Hogg had done, projected a magazine with the same name, and incurred considerable expense in preparing it, and extensively advertising it in August and September as about to appear in October. Messrs. Hogg, knowing of this, made hasty preparations for bringing out their own magazine before that of Mr. Maxwell could appear, and in the meantime accepted an order from Mr. Maxwell for advertising his (Mr. Maxwell's) magazine on the covers of their own publications, and the first day on which they informed Mr. Maxwell that they objected to his publishing a magazine under that name was the 25th of September, on which day the first number of Messrs. Hogg's magazine appeared. Mr. Maxwell's magazine appeared in October. Under these circumstances, on a bill filed by Mr. Maxwell, it was held, that Mr. Maxwell's advertisements and expenditure did not give him any exclusive right to the use of the name 'Belgravia,' and that he could not restrain Messrs. Hogg from publishing a magazine under the same name, the first number of which appeared before Mr. Maxwell had published his: and on a bill filed by Messrs. Hogg, that the registration by them of the title of an intended publication could not confer upon them a copyright in that name, and that, in the circumstances of the case, they had not acquired any right to restrain Mr. Maxwell from using the name as being Messrs. Hogg's trade-mark (*b*).

In *Maxwell* v. *Hogg*, Lord Cairns seemed to think that there could not be what is termed copyright in a single word, although the word were used as a fitting title for a book. He considered that the copyright contemplated by the Act must

(*a*) *Platt* v. *Walter* (1867), 17 L. T. 157.
(*b*) *Maxwell* v. *Hogg*; *Hogg* v. *Maxwell* (1867), L. R. 2 Ch. Ap. 307; 15 L. T. 201; 15 W. R. 84, 464; 36 L. J. (Ch.) 433; 12 Jur. (N.S.) 916.

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be not in a single word (*a*), but in some words in the shape of a volume or part of a volume, which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work (*b*). But his lordship was dealing with a case in which the defendant had nothing but the name, publication not having been effected.

Copyright in a title.

The titles to books, newspapers, and periodicals, though often coming before the courts on the question of copyright therein, seem not to be in themselves the proper subjects of this right. A title is no doubt, in one sense, a part of the work itself, for one cannot read a book or turn over the title-page without finding that the title is at the commencement of the work and sometimes on every page, yet it is rather the index to the whole than part thereof—and certainly when registered before the publication, or perhaps even before the creation of the work whereof it is intended to be the title, could hardly be deemed to be part of the same; and if it were, then as copyright could not subsist in that which has no actual existence, the right to the title would fail on this ground, except it could be argued that the title being part of the work, and the only part in existence, could be registered as having an intrinsic value of its own.

However intimately connected with the copyright in the work to which it is prefixed, the title is more properly a trade-mark (*c*). It is not protected on the ground of any intrinsic merit or value possessed by itself, but, like other trade-marks, is protected for the purpose of insuring the genuineness of the article to which it is attached.

There can be no doubt that there is in a title a right capable of protection, and an asset capable of realization (*d*). The right to use the title to Dickens's periodical 'Household Words' sold for £3550 (*e*).

(*a*) *Chilton* v. *Progress Printing Co.* (1895), 2 Ch. 29; *The Primrose Press Agency Co.* v. *Mark Knowles and others* (1886), 2 T. L. R. 101.

(*b*) See *Maxwell* v. *Hogg*, *supra*; *Licensed Victuallers Newspaper Co.* v. *Bingham* (1888), 38 Ch. D. 139.

(*c*) Lord Cottenham in *Spottiswoode* v. *Clarke* (1844), 2 Ph. 154, seems to have thought that the title-page of an almanack was quite a different thing from a trade-mark, but his reasoning is not convincing, and hardly capable of being sustained in view of subsequent decisions. And in *Mack* v. *Petter* (1872), L. R. 14 Eq. 431, 20 W. R. 961, Lord Romilly used the word "copyright" as applied to the title of a book: "but it is impossible," says V.-C. Bacon in *Kelly* v. *Byles* (1880), 13 Ch. D. at p. 688, "to read his judgment and to doubt that the injunction he granted was to restrain the defendant's colourable imitation of the actual book which the plaintiff had first sent into the world."

(*d*) *Longman* v. *Tripp* (1815), 2 Bos. & P. 67: 9 R. R. 617: Ex parte *Foss* (1858), 2 De G. & J. 230: *Bradbury* v. *Dickens* (1859), 27 Beav. 53.

(*e*) *Bradbury* v. *Dickens*, *supra*.

Titles infringed.

The registered proprietors of 'Bell's Life in London and Sporting Chronicle,' published weekly, at the price of 5*d.*, filed a bill against the proprietors and publishers of a new newspaper, called 'The Penny Bell's Life and Sporting News,' which was published at the price of a penny. The evidence produced showed that from the similarity of the two names mistakes had occurred, and were likely to occur, on the part of the public, and that inquiries had been made at the office of 'Bell's Life in London,' for 'The Penny Bell's Life.' On motion on behalf of the plaintiffs, the Court granted an injunction to restrain the defendants from the use of the words 'Bell's Life' in the title of their newspaper, though no fraudulent intention was proved (*a*). So also in *Ingram* v. *Stiff* (*b*) an injunction was granted by Sir W. P. Wood, V.-C., to restrain the defendant from printing, publishing, or selling any newspaper or other periodical under the name of 'The Daily London Journal,' or under any other name or style of which the words 'London Journal' should form part, and from doing or committing any act or default which might tend to lessen or diminish the sale or circulation of the plaintiff's periodical called 'The London Journal.'

In the case of the *Correspondent Newspaper Company* v. *Saunders* (*c*), where the publishers of 'The Correspondent' newspaper sought to restrain the defendant from publishing another paper under the name of 'The Public Correspondent,' Lord Hathorley, when Vice-Chancellor, after holding that registration of a newspaper was of no avail without actual publication, went on to express a doubt whether in any case registration would protect the title of the paper as being included in the copyright, but did not doubt that a title could be acquired as in a trade-mark.

And in a later case (*d*) the same judge, when Lord Justice, said that there appeared to him to be nothing analogous to copyright in the name of a newspaper; but that the proprietor had a right to prevent any other person from adopting the same name for any other similar publication (*e*).

Where precisely the same title taken.

There are two cases reported of novels with identical titles. In the case of *Weldon* v. *Dicks* (*f*) the plaintiff was the assignee

(*a*) *Clement* v. *Maddick* (1859), 1 Giff. (Ch.) 98; 5 Jur. (N.S.) 592.
(*b*) (1859), 5 Jur. (N.S.) 947.
(*c*) (1865), 13 W. R. 801; 11 Jur. (N.S.) 540.
(*d*) *Kelly* v. *Hutton* (1868), L. R. 3 Ch. 703; 16 W. R. 1182.
(*e*) *Borthwick* v. *The Evening Post* (1888), 37 Ch. 449; *Walter* v. *Emmott* (1885), 54 L. J. (Ch.) 1059, as to which and this subject generally, see chapter Newspapers, *post*.
(*f*) (1878), 10 Ch. D. 247; 27 W. R. 369.

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of the copyright in the 'Parlour Library' series consisting partly of original works, and partly of works which had been previously published. Amongst this series was a novel bearing the title 'Trial and Triumph,' which had been originally published in 1854, in a separate form in three volumes, and re-published in the 'Parlour Library' series in 1860. In 1876 the plaintiff commenced to re-issue the series and was preparing for publication a new edition of 'Trial and Triumph,' which would be shortly published by him at the price of two shillings. The defendant had recently commenced to issue a series of books and novels under the general title of 'Dick's English Novels,' and he had published in such series a novel under the title of 'Trial and Triumph' at the price of sixpence. The plaintiff claimed an injunction to restrain the defendant from publishing or selling any book or publication under that title, and the injunction was granted by Malins, V.-C., though the defendant was in entire ignorance that the title 'Trial and Triumph' had been previously used, and though his work was quite distinct in its plot and subject-matter from the plaintiff's book. The learned judge said: "It is plain that every man who publishes a book under a particular name, the name forming part of the book, has a copyright extending to forty-two years or the life of the author, whichever lasts longest: therefore the author of 'Trial and Triumph' when it was published in 1854 acquired title for that period."(*a*) If, however, the right to the title rested on copyright, it is difficult to see how the defendant had infringed the plaintiff's right, seeing he had never seen or heard of his book; but there are indications in the judgment that the judge granted the injunction also on the ground that the public were likely to be deceived.

The second case of novels with identical titles is *Dicks* v. *Yates* (*b*). There the defendant had published a novel in the 'World,' a sixpenny newspaper, with the title 'Splendid Misery' in ignorance that that was the title of a novel which had appeared a few years before in the plaintiff's periodical 'Every Week,' published at a penny a number. It was, however, proved that, many years before the plaintiff's novel was published, another novel had borne the same title. The Court of Appeal, reversing Bacon, V.-C., refused the plaintiff an injunction, Jessel, M.R., and Lush, L.J., on the ground of lack of

(*a*) 10 Ch. D. at p. 260. Of course, the period is not quite accurately stated by the learned Judge.
(*b*) (1881), 18 Ch. D. 77.

originality or likelihood of mistake on the part of the public, and James, L.J., on the ground that there had been no infringement. "I do not say," said the Master of the Rolls, "that there could not be copyright in a title, as, for instance, in a whole page of title, or something of that kind, requiring invention. However, it is not necessary to decide that. But, assuming that there can be copyright in a title, what does this copyright mean? It means the right of multiplying copies of an original work. If you complain that part of your work has been pirated, you must show that that part is original, and if it is not original, you have no copyright (*a*). How can the title 'Splendid Misery' be said to be original, when the very same words, for the very same purpose, were used nearly eighty years ago?" Later on, however, he stated that it appeared to him that no authority binding on that Court had been produced to show that there could be copyright in such a title as that, and with this opinion Lord Justice James expressed his concurrence, Mr. Justice Lush desiring to keep the point open.

There is, therefore, no express decision that there cannot be copyright in a title, though it must be admitted, the current of authority is in favour of that proposition, at any rate, unless there be ingenuity in the title. The Courts would, however, without doubt, grant an injunction if one person deliberately appropriated the title of a successful novel for the title of his novel (*b*), either on the ground of infringement of copyright, or on the ground that such conduct was evidence of an intention to deceive.

Where exact title not taken.

When the exact title is not copied, an injunction will certainly not be granted unless the title and appearance of the defendant's publication are designed to deceive persons who are ordinarily intelligent and careful. Thus in a case where the well-known title of 'Punch' was taken, with the addition thereto of 'Judy,' although the court held that the defendant would not be at liberty to use 'Punch' singly as a title, yet it refused to restrain the use of a title made up of the two words, on the ground that in combination they did not form such a title as to deceive persons of ordinary intelligence. "The defendants," said Vice-Chancellor Malins, "clearly have no right to use a name which is calculated to mislead or deceive the public in purchasing; and if I thought, on the whole, that their journal

(*a*) But see *Walter* v. *Lane* (1900), A.C. 539 and *ante* p. 30.

(*b*) Thackeray could hardly have had a right to restrain the proprietors of the illustrated paper 'Vanity Fair,' using that title, as being an infringement of his rights in the novel of the same name.

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was calculated to mislead persons of ordinary intelligence (for these are the persons I must consider) I should grant the injunction. Now 'Punch' is well known both in name and appearance, and its price is threepence. Could any one be misled into buying this other paper instead, which has the words 'Punch and Judy,' printed on it in distinct letters with a different frontispiece, and its price a penny? I am clearly of opinion that the mass of mankind would not be so misled" (*a*).

So where the proprietor of the 'Era' newspaper sought to restrain the use of his title with the addition of 'New,' by a rival publication, the Lord Justices reversed the decision of Vice-Chancellor Bacon, and held that there was no ground for granting any injunction. They considered that the real question was this, "Is what appears on the front of the paper calculated to deceive an ordinary purchaser into the belief that the article sold to him is other than what it is, and what it seeks to imitate?"

Again, the proprietors of the old-established 'Mail,' published at 11 A.M. three days a week at the price of twopence, were refused an interlocutory injunction to restrain the publication at 3 A.M. daily of a halfpenny paper entitled the 'Morning Mail'; but this was expressly without prejudice to what might be done at the hearing of the action (*b*).

The law on this subject cannot be considered to be in a satisfactory state, for it is perfectly clear that a publication may be seriously injured by the similarity of name of a rival publication, without the wrappers or general style or appearance being in any way copied. Thousands of copies are purchased through advertisements, and without the purchaser until delivery seeing the subject of his purchase. The hardship is increased when it is remembered that to obtain a right to the title of his publication, a proprietor will have to prove that it has been in the market long enough to acquire a public reputation (*c*).

Where necessary to show fraud.

It is usually considered that as the injury caused by the infringement is an injury to property, it is not necessary to prove fraudulent intent. This is true so far as it goes, but at the same time it must be remembered that unless fraud in a sense is proved, or at least a probability of deception or

(*a*) *Bradbury* v. *Beeton* (1869), 18 W. R. 33; 39 L. J. Ch. 57: 21 L. T. 323.
(*b*) *Walter* v. *Emmott* (1885), 54 L. J. Ch. 1059. cf. *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449: *Walter* v. *Head* (1881), 25 Sol. J. 757; *Cowen* v. *Hulton* (1882), 46 L. T. 897; *Reed* v. *O'Meara* (1888), 21 L. R. Ir. 216.
(*c*) *Licensed Victuallers Newspaper* v. *Bingham* (1888), 38 Ch. D. 139.

imposition on the public is established (*a*) and of injury to himself (*b*), a plaintiff cannot well succeed. Where there is a close resemblance in general style and arrangement of the contents of the book itself (*c*), or a claim of certain attributes which are known to belong to the original work (*d*), or a sudden change from an unobjectionable title, style of publication, and arrangement of contents to a style more closely resembling the plaintiff's (*e*), an intention to deceive may be established.

Thus in *Hogg* v. *Kirby* (*f*) the proprietor of 'The Wonderful Magazine' succeeded in stopping the publication of 'The Wonderful Magazine, New Series, Improved.' So in *Chappell* v. *Sheard* (*g*), and *Chappell* v. *Davidson* (*h*), where the plaintiff's song was entitled 'Minnie,' and those of the respective defendants 'Minnie Dale,' and 'Minnie, Dear Minnie'; and where the purchaser of 'The Britannia' newspaper incorporated it with the 'John Bull,' under the name of 'The John Bull and Britannia,' and the former publisher of 'The Britannia' began to publish 'The True Britannia' (*i*), injunctions were issued.

Taking a part of title without fraud.

But, as already stated, the taking of *part of the title* of a registered work without fraud, and without any circumstances from which an *animus furandi* could be inferred, and where no deception is to be apprehended, will not be deemed an offence, and this is well illustrated by a case in which the proprietor of a book entitled 'Post Office Directory of West Riding of Yorkshire,' which included the town of Bradford, sought to restrain the intended publication by the defendants of a directory of Bradford with the words 'Post Office' forming part of the title. It appeared that many years ago an officer of the London Post Office published, with the assistance of the letter carriers, a directory which he called 'Post Office' Directory. Subsequently a brother of the plaintiff became the publisher and proprietor of the work, which was carried on by him till 1846, with the assistance of the letter carriers as before. After 1846 the plaintiff's brother was prohibited by the Post Office authorities from employing the letter carriers, and he

(*a*) See *Hall* v. *Barrows* (1863), 4 De G. J. & S. 150; 12 W. R. 322; *Chappell* v. *Davidson* (1855), 2 K. & J. 123.
(*b*) *Borthwick* v. *Evening Post*, *ubi sup.*
(*c*) *Mack* v. *Petter* (1872), L. R. 14 Eq. 431; 20 W. R. 961; *Corns* v. *Griffiths*, W. N. (1873), 93.
(*d*) *Chappell* v. *Sheard* (1855), 2 K. & J. 117.
(*e*) *Corns* v. *Griffiths*, *supra*. *Metzler* v. *Wood* (1878), 8 Ch. D. 606; 26 W. R. 577.
(*f*) (1803), 8 Ves. 215. (*g*) *Supra*. (*h*) *Supra*.
(*i*) *Prowett* v. *Mortimer* (1856), 4 W. R. 519; 27 L. T. 132; see *Edmonds* v. *Benbow* (1821), Seton on Decrees, 6th Ed. 629.

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thereupon employed a large staff of private agents to obtain the information necessary for the continuance of his directory, which was still called the 'Post Office' Directory. In 1852 the plaintiff began publishing country directories, making use of his brother's staff of agents, and, with his brother's consent, called his directories 'Post Office' Directories. The plaintiff alleged that his directories were distinguished and known in the trade and to the public as 'Post Office Directories,' and that the term 'Post Office' was a very valuable trade distinction. The defendants had received assistance of the postmaster at Bradford, and it was not alleged that there had been any copying or colourable imitation of any part of the text of the plaintiff's work, neither was there any similarity in price or appearance between the two directories, and the only question was as to the plaintiff's exclusive right to the use of the word 'Post Office' as applied to directories. Vice-Chancellor Bacon was of opinion that to support a claim to restrain the use by another of a name on the ground of it being a *quasi* trademark, it was necessary to show that the wares offered for sale were so nearly identical that the use of the particular trademark or name might mislead unwary purchasers. He considered that the defendants were clearly entitled to publish a directory of Bradford, and as no person wishing to possess the plaintiff's 'Post Office Directory for the West Riding of Yorkshire' could be misled or deceived into buying the defendant's 'Post Office Bradford Directory, judgment must be given for the defendants (*a*), and on appeal the court affirmed the judgment of the Vice-Chancellor (*b*).

Assuming title which

Should a periodical change its name for another, there

(*a*) *Kelly* v. *Byles* (1880), 13 Ch. Div. 682; see *Barnard* v. *Pillow*, W. N. (1868), 94; *Snowden* v. *Noah*, Hopk. (Amer.) 347; *Bell* v. *Locke*, 8 Paige (Amer.) 75; *Stephens* v. *De Cento*, 30 N. Y. Sup. Ct. 343; *Talbot* v. *Moore*, 13 N. Y. Sup. Ct. 106.

(*b*) *Jollie* v. *Jaques*, 1 Bl. C. C. (Amer.) 618, was a suit to restrain an imitation of a musical composition entitled 'The Serious Family Polka'; it having been decided that the plaintiff's claim to copyright could not be supported, it was held that the plaintiff not being entitled to the copyright in the composition, he was not entitled to protection in respect of the title. Nelson, J., said, "The title or name is an appendage to the book or piece of music for which the copyright is taken out, and if the latter fails to be protected, the title goes with it, as certainly as the principal carries with it the incident." So in another American case, where the plaintiffs were the proprietors and publishers of a monthly magazine for the young, published at Boston, Mass., under the title 'Our Young Folks; an Illustrated Magazine for Boys and Girls,' and the defendant began to advertise and publish, and sell at Augusta, Maine, a fortnightly illustrated paper for the young, under the title 'Our Young Folks' Illustrated Paper.' A suit being instituted for an injunction to restrain the defendant from using the words 'Our Young Folks' as the title of the publication, the Court held that the title of a copyrighted publication was not capable of protection as copyright, except in conjunction with the publication which it was used to designate, and that the copyright in the paper not having been infringed, that in the title had not been: *Osgood* v. *Allen*, 1 Holmes (Amer.) 185; 6 Am. L. T. 20.

would be no ground for preventing another periodical assuming the name which has been thus cast off, after a reasonable lapse of time, provided the latter periodical did not hold out to the world as a continuation of the periodical whose title it had adopted (*a*).

has been disused.

Copyright may exist in a translation, whether it be the result of personal application and expense, or donation (*b*). In the case of *Wyatt* v. *Barnard* (*c*), Lord Eldon states this to be the law: The plaintiff was the proprietor of a periodical called 'The Repository of Arts, Manufacture, and Agriculture.' He claimed the sole copyright of the work, containing, amongst other articles, translations from foreign languages. The defendants were publishers of another periodical which contained various articles, being translations from foreign languages, copied or taken from the plaintiff's work without his consent. The defendants, by their affidavit, stated that it was the usual practice among publishers of magazines, &c., to take from each other articles translated from foreign languages, or become public property by reason of their having appeared in other works. They relied on the custom of the trade and contended that neither of the works was original, both being mere compilations; that it had never been decided that a translator might have a copyright in a translation, supposing, what was not proved, that these translations were made by the plaintiff himself. The Lord Chancellor said that the custom among booksellers could not control the law; and upon an affidavit stating that all the articles were translated by a person employed and paid by the plaintiff, and were translated from foreign books imported by the plaintiff at considerable expense, his Lordship granted an injunction (*d*).

Copyright in translations.

The work from which the translation was taken in the present case was, of course, unprotected by the copyright law in existence here, and the cases which have treated translations from foreign works, having no copyright in this country, as original, would not necessarily form a precedent in the case of a translation of an English copyright work. But in the case above cited, Lord Eldon drew no distinction between translations

Every fair translation

(*a*) The *Cour Royale* at Paris in 1831 sanctioned the publication of a journal under the title of *Gazette de Santé*, which another journal had formerly borne, but which it had for seven months abandoned for the title *Gazette Médicale de Paris*. Renouard, tom. 2, p. 128, cited Curtis on Copy. 297.

(*b*) *Wyatt* v. *Barnard* (1814), 3 V. & B. 77. If a foreigner translates an English work, and then an Englishman re-translates the foreign work into English, that is an infringement of the original copyright: *Murray* v. *Bogue* (1852), 17 Jur. 219: 1 Drew. 353; 22 L. J. (Ch.) 457.

(*c*) *Supra*. *Vide Stowe* v. *Thomas*, 2 Amer. L. Reg. 231.

(*d*) See per North, J., *Walter* v. *Lane* (1899), 2 Ch. at p. 758.

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an original work.

of works unprotected and those protected in this country, indeed it was not necessary to do so for the decision of the point involved in the case before him. This case is sometimes cited for the purpose of showing that every translation is an original work and entitled to protection, whether made from an unprotected or a protected work. But it does not go to this extent, and notwithstanding the dicta of Mr. Justice Yates, in *Millar* v. *Taylor* (*a*), and Lord Macclesfield, in *Burnett* v. *Chetwood* (*b*), and of the late Lord Justice Knight Bruce, when Vice-Chancellor (*c*), it appears to be the better opinion that a work in which copyright is still subsisting cannot be translated without the consent of the proprietor of the copyright. Lord Justice Knight Bruce, in the well-known case of *Prince Albert* v. *Strange* (*d*), thought that a work lawfully published, in the popular sense of the term, stood in this respect differently from a work which had never been in that situation. The former was liable to be translated, abridged, analyzed, exhibited in morsels, complemented, and otherwise treated in a manner that the latter was not. There has been a decision in America in accordance with the opinion of Lord Justice Knight Bruce (*e*), but it is not likely to be followed in this country. It is unsupported by authority and opposed to the principles of the copyright law (*f*).

Provisions of International Copyright Act, 1886, as to translations.

By the International Copyright Act, 1886 (49 & 50 Vict. c. 33, s. 5), where a work being a book or dramatic piece is first produced in a foreign country to which an order in council under the International Copyright Acts applies, the author or publisher as the case may be, shall, unless otherwise directed by the order, have the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work. Provided that if after the expiration of ten years or any other term prescribed by the order next after the end of the year in which the work, or in the case of a book published in numbers, each number of the book was first produced, an authorised translation in the English language of such work or numbers has not been produced, the said right to prevent the production in and

(*a*) (1769), 4 Burr. 2348.
(*b*) 2 Mer. 141. (*c*) *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 693.
(*d*) *Supra*.
(*e*) *Stowe* v. *Thomas*, 2 Wall. Jr. 547; 2 Am. Law Reg. 210; but see, now, Revised Statutes (Amer.), sect. 4952, Act of 1891.
(*f*) But in India it has been held that a translation is not an infringement of copyright. *MacMillan* v. *Shamsull* (1895), 19 Indian L. R. (Bombay) 557.

importation into the United Kingdom of an unauthorised translation of such work shall cease. And it is also declared that the law relating to copyright, including the International Copyright Act, 1886, shall apply to a lawfully produced translation of a work in like manner as if it were an original work (*a*).

No copyright in a libellous, immoral, or obscene work.

Copyright cannot exist in a work of libellous, immoral, obscene, or irreligious tendency (*b*); because in order to establish such a claim the author must, in the first place, show a right to sell; and this he cannot possibly do, he himself not being able to acquire a property therein. *Nemo plus juris ad alium transferre potest quam ipse habet* (*c*).

The property here referred to is that consisting in the right to take the profits of the work when published. But in *Southey* v. *Sherwood* (*d*) Lord Eldon seems to have carried the rule still further, and refused to admit a right in the author of a work of a non-innocent nature to the possession and control of his manuscript. He appears to have overlooked the fact that the law recognised two kinds or degrees of property in a literary work. There is a right of property which consists in the right to take the profits of a book when published; and there is also a right to the exclusive possession and control of a manuscript, or the right to publish or to withhold from publication altogether (*e*).

"The first of these rights," says Mr. Curtis, in his examination of Lord Eldon's judgment in the last-mentioned case (*f*), "depends now in England and in America upon statute. The other is a right at common law, independent of the property created or recognised by statute. The law of England has never said that an author has no property in his manuscript *qua* manuscript, or in the ideas and sentiments written upon it before publication. If it had, it would only be necessary to

(*a*) See International Copyright, *post*.

(*b*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173; 7 D. & R. 625; 29 R. R. 207; *Hime* v. *Dale* (1803), cited, 2 Camp. 28; *Walcot* v. *Walker* (1802), 7 Ves. 1; *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337; *Gee* v. *Pritchard* (1818), 2 Swans. 113; *Southey* v. *Sherwood* (1817), 2 Mer. 435; *Murray* v. *Benbow* (1822), 1 Jac. 474; *Lawrence* v. *Smith*, *ibid.* 471; *Forrester* v. *Johnes* (1802), 4 Esp. 97; *Gale* v. *Leckie* (1817), 2 Stark. N. P. C. 107; and see an article in 'Quarterly Review' for April 1822, and 'Blackwood's Magazine' for July 1822; *Dodson* v. *Martin*, Sol. Journ. 29th of May 1880, 572. The principal has recently been recognized in the case of *Bauchet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73, where the Court of Appeal refused to protect two indecent pictures.

(*c*) Ulpian: *Nemo potest plus juris ad alium transferre quam ipse habet*; Co. Lit. 309; Wing. 56.

(*d*) (1817), 2 Mer. 435.

(*e*) See *Wheaton* v. *Peters* (1834), 8 Peters, S. C. R. (Amer.) 591; cited Curtis Copy. 158.

(*f*) Copyright, p. 158.

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steal a manuscript in order to be able to print it with impunity; and the author could only take the profits, or obtain an injunction by showing that he himself intended to publish and to take the profits. It has long been settled, however, that the author and proprietor of a manuscript has the sole dominion over it, and may obtain an injunction to prevent its publication by another: and in no case has it been considered that his right depends on his intention to publish and to make a profit. But the cases proceed upon the ground of *a right of property*: and what seems to be intended by this is a right to the possession and control of the manuscript, and to publish or to withhold from publication. In the great case of *Donaldson* v. *Becket*, in the House of Lords, in which the perpetual right of authors after publication was held to have been taken away by the Act of Anne, eleven of the judges (including those who decided against some of the claims of authors) affirmed the sole right and dominion of an author over his own manuscript, as a right at common law. When, therefore, an author has not published, or does not intend to publish a work existing in manuscript, but on the contrary desires and intends to withhold it from publication, the question as to its innocence cannot arise, because that question, according to principle and the decisions, affects only so much of his right of property as consists in the right to take the profits of the publication. It is in this sense that the law declares there can be no property in an immoral, irreligious, or seditious publication; and not that there can be no right to the exclusive possession and control of whatever a man writes, before publication, unless it be innocent."

Lord Eldon's decision in *Southey* v. *Sherwood* has been severely critised by Lord Campbell, who states that in consequence of the refusal of the injunction asked for, hundreds of thousands of copies of 'Wat Tyler,' the poem the publication of which was sought to be restrained, at the price of one penny were circulated over the kingdom (*a*).

Argument in favour of protecting such work.

Not to protect such works, it has been argued, is to increase the circulation by allowing the publication of pirated editions; but it is an open question whether the circulation is not more effectually restrained by holding that there can be no property in such a work, than by protecting it; for the inducement to the publisher will be less if other persons may copy and publish *ad infinitum*.

Answer thereto.

In answer to the remark, that by refusing to interfere in

(*a*) 'Lives of Chancellors,' vol. 10, p. 254 (4th Ed.).

cases where the work is of an evil tendency, the court virtually promotes, in some instances, the multiplication of mischievous productions, it must be borne in mind, that a court of equity professes to decide only upon questions of property, concerning itself merely with the civil interests of the parties, and disclaiming interference to prevent or to punish injuries of a criminal nature; and it therefore leaves the offending person to be dealt with at law (*a*). And adopting such a course is not merely to act in conformity with its own general principles, but also with the constitution of the country; for, to assist a person who has exerted himself to the prejudice of national or of individual welfare, by deciding upon questions of a criminal character, the court would be assuming a power of adjudication in instances which, according to our notions of political freedom, ought not to be determined without the intervention of a jury. And it is also observable that, although interposition is refused in cases of this kind, except upon the plaintiff's right receiving the sanction of a court of law, the court of equity does not thereby bereave the party applying, of any redress which he might otherwise obtain, or of the means of seeking it, but merely withholds that extraordinary relief which is adapted to other cases (*b*).

Dr. Priestley's case.

The first case establishing the doctrine that there could not be property in a work of the above description, is that known as Dr. Priestley's. The plaintiff brought an action against the hundred to recover damages for injury sustained by him in consequence of the riotous proceedings of a mob at Birmingham, and, among other property alleged to have been destroyed, claimed compensation for the loss of certain unpublished manuscripts, offering to produce booksellers as witnesses to prove that they would have given considerable sums for them. On behalf of the hundred it was alleged that the plaintiff was in the habit of publishing works injurious to the government of the State; but no evidence was produced to that effect. Upon this the Lord Chief Justice Eyre remarked, that if any such evidence had been produced, he should have held it was fit to be received as against the claim made by the plaintiff. Several passages were read from the work itself in support of the charge as to its tendency (*c*).

Though Lord Eldon appears to base his decision in *Southey* v. *Sherwood* upon this case before Lord Chief Justice Eyre, yet

(*a*) *Vide* 7 Ves. 2; 2 Mer. 438; 2 Swans. 413; 1 Jac. 473.
(*b*) Jer. Eq. Jur. bk. 3, ch. 2.
(*c*) See 2 Mer. 437.

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it will be at once perceived that there is a material difference between them, for in the case before Lord Eldon, Southey claimed the right to prevent publication, whereas in the case before Lord Chief Justice Eyre, Dr. Priestley sued for the loss of profits, which he alleged he might have realised by publication—a point to which he never could have lawfully proceeded.

No copyright in a work of an irreligious tendency.

The above cases were followed in *Walcot* (*Peter Pindar*) v. *Walker* (*a*), and in *Lawrence* v. *Smith* (*b*). In the latter case the doctrine was carried very far. The plaintiff having published a work under the title of 'Lectures on Physiology, Zoology, and the Natural History of Man,' filed a bill to restrain the defendant from selling a pirated edition, and obtained an injunction upon motion made *ex parte*. The defendants then moved to dissolve the injunction, and argued that the nature and general tendency of the work in question was such that it could not be the subject of copyright, and in support of this argument several passages in it were referred to, which, it was contended, were hostile to natural and revealed religion, and impugned the doctrines of the immateriality and immortality of the soul. Lord Eldon, in dissolving the injunction, said: "Looking at the general tenor of the work, and at many particular parts of it, recollecting that the immortality of the soul is one of the doctrines of the Scripture, considering that the law does not give protection to those who contradict Scripture (*c*), and entertaining a doubt, I think a rational doubt, whether this book does not violate the law, I cannot continue the injunction. The plaintiff may bring an action, and when that is decided, he may apply again." From a note by the editor, we learn that in 1822, in *Murray* v. *Benbow*, Mr. Shadwell, on the part of the plaintiff, moved for an injunction to restrain the defendants from publishing a pirated edition of Lord Byron's poem of 'Cain.' The Lord Chancellor, after reading the work, refused the motion, on grounds similar to those stated in the above judgment. He said "that the Court of Chancery, like other courts of justice in this country, acknowledged Christianity as part of the law of the land; that the jurisdiction of the court in protecting literary property was founded on this: that, where an action would lie for pirating a work, then the court, attending to the

(*a*) (1802), 7 Ves. 1. See *Stockdale* v. *Onhwyn* (1826). 5 B. & C. 173; *Poplett* v. *Stockdale* (1825), Ry. & M. 337.

(*b*) (1822), 1 Jac. 471; 23 R. R. 123.

(*c*) "Christianity is part and parcel of the law of the land:" Kelly, C.B., in *Cowan* v. *Milbourn* (1867), L. R. 2 Ex. 230.

imperfection of that remedy, granted its injunction, because there might be publication after publication, which one might never be able to hunt down by proceeding in other courts. But where such an action did not lie, he did not apprehend that it was according to the course of the court to grant an injunction to protect the copyright. That the publication, if it were one intended to vilify and bring into discredit that portion of Scripture history to which it related, was a publication with reference to which, if the principles on which that case at Warwick (Dr. Priestley's) was decided were just principles of law, the party could not recover damages in respect of a piracy of it. That the court had no criminal jurisdiction: it could not look on anything as an offence; but in those cases it only administered justice for the protection of the civil rights of those who possessed them, in consequence of being able to maintain an action. Milton's immortal work had been alluded to; it so happened that in the course of the previous long vacation, amongst the *solicita jucunda oblicia vitæ*, he had read that work from beginning to end; it was therefore quite fresh in his memory, and it appeared to him that the great object of its author was to promote the cause of Christianity; there were, undoubtedly, a great many passages in it of which, if that were not its object, it would be very improper by law to vindicate the publication; but, taking it altogether, it was clear that the object and effect were not to bring into disrepute, but to promote, the reverence of our religion. That the real question was, looking at the work before him, its preface, the poem, its manner of treating the subject, particularly with reference to the Fall and the Atonement, whether its intent was as innocent as that of the other with which it had been compared; or whether it was to traduce and bring into discredit that part of sacred history. This question he had no right to try, because it had been settled, after great difference of opinion among the learned, that it was for a jury to determine that point; and where, therefore, a reasonable doubt was entertained as to the character of the work (and it was impossible for him to say he had not a doubt, he hoped it was a reasonable one), another course should be taken for determining what was its true nature and character" (*a*).

In a case which came before the Vice-Chancellor in 1823, 'Don Juan.' an injunction which had been obtained to restrain the publication of a pirated edition of a portion of the poem of

(*a*) *Murray* v. *Benbow*, in Ch. 1822. MS., cited 6 Peters. Abr. 558.

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'Don Juan,' was dissolved on a similar principle. His Honour ordered that the defendant should keep an account.

Referring to Lord Eldon's decisions in the above cases, Mr. Justice Story says: "The soundness of the general principle can hardly admit of question. The chief embarrassment and difficulty lie in the application of it to particular cases. If a court of equity, under colour of its general authority, is to enter upon all the moral, theological, metaphysical, and political inquiries, which in the past times have given rise to so many controversies, and in the future may well be supposed to provoke many heated discussions, and if it is to decide dogmatically upon the character and bearing of such discussions, and the rights of authors growing out of them; it is obvious that an absolute power is conferred over the subject of literary property, which may sap the very foundations on which it rests, and retard, if not entirely suppress, the means of arriving at physical as well as at metaphysical truths. Thus, for example, a judge who should happen to believe that the immateriality of the soul, as well as its immortality, was a doctrine clearly revealed in the Scriptures (a point upon which very learned and pious minds have been greatly divided), would deem any work anti-christian which should profess to deny that point, and would refuse an injunction to protect it. So, a judge who should be a Trinitarian might most conscientiously decide against granting an injunction in favour of an author enforcing Unitarian views; when another judge, of opposite opinions, might not hesitate to grant it" (*a*).

'Life of Jesus.'

The very case surmised by Mr. Justice Story arose in the year 1874 in the Scotch Courts. A work entitled 'The Life of Jesus re-written for Young Disciples,' by Mr. Page Hopps, Unitarian minister, Glasgow, was published by Messrs. Trübner & Co., London, at 1*s.* a copy. The defendant, Harry Alfred Long, Protestant missionary, about a year after its appearance, issued a review containing the whole of Mr. Hopps's book, with notes and criticisms attached to each chapter, and this publication was sold at 6*d.* Hopps applied for an interim interdict, which being granted, he subsequently sought to have it declared perpetual. The plea put forward by the defendant was that the pursuer could not claim the protection of the law for the book, as it was blasphemous and heretical, denying tacitly or expressly the divinity of Christ. To this the pursuer replied that apart from the fact

(*a*) 2 Story's Eq. Jur., p. 938.

that it was written by a Unitarian, and set forth the Unitarian view of the Saviour's life, a more unobjectionable book did not exist. Mr. Sheriff Buntine, of the Sheriff's Court of Lanarkshire, declared the interdict perpetual, and found Long liable in expenses, holding that, though the doctrine that Jesus Christ is the second person of the Trinity is statute law, yet the public are entitled to criticise and controvert any part of the statute law, provided they do it in such a way as not to endanger the public peace, safety, or morality. Mr. Hopps. the sheriff considered, violated none of these conditions, and was entitled to the protection of the law.

No copyright in a work of a scandalous nature.

In the case of *Hime* v. *Dale*, referred to in *Clementi* v. *Goulding* (*a*), counsel called attention to the libellous nature of the publication, and contended that it was of such a description that it could not receive the protection of the law. Lord Ellenborough, however, stated that though if the composition had appeared on the face of it to be a libel so gross as to affect the public morals, he should advise the jury to give no damages, as he knew the Court of Chancery on such an occasion would grant no injunction, yet he thought the particular publication ought not to be considered one of that kind. But in another case (*b*) where an action was brought for the purpose of recovering compensation in damages for the loss alleged to have been sustained by the publication of a copy of a book which had been first published by the plaintiff; and at the trial it was proved that the work was the memoir of Harriette Wilson, which professed to be a history of the amours of a courtezan, that it contained in some parts matter highly indecent, and in others matter of a slanderous nature upon persons named in the book, Abbott, C.J., directed a nonsuit, and in refusing a rule nisi for a new trial said: "In order to establish such a claim (*i.e.*, to compensation for infringement of his copyright), he must, in the first place, show a right to sell, for if he has not that right, he cannot sustain any loss by an injury to the sale. Now I am certain no lawyer can say that the sale of each copy of this work is not an offence against the law. How then can we hold that by the first publication of such a work a right of action can be given against any person who afterwards publishes it? It is said

(*a*) (1803), 2 Camp. 27.

(*b*) *Stockdale* v. *Onhuyn* (1826), 5 B. & C. 173; 29 R. R. 207; see *Poplett* v. *Stockdale* (1825), Ry. & M. 337, where it was held that the printer of the work, the subject of the last case, could not maintain an action for his bill against the publisher who employed him. Best, C.J., said the defendant was equally guilty with the plaintiff, but that he would not, as Lord Kenyon once said, sit to take an account between two robbers on Hounslow Heath.

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that there is no decision of a court of law against the plaintiff's claim. But upon the plainest principles of the common law, founded as it is, where there are no authorities, upon common sense and justice, this action cannot be maintained. It would be a disgrace to the common law could a doubt be entertained upon the subject, but I think that no doubt can be entertained, and I want no authority for pronouncing such a judicial opinion."

No copyright in works intended to deceive the public.

Neither can there be copyright in works intended to deceive purchasers, and therefore, in an action for pirating a work of a devotional character, falsely professing to be a translation from the German, of an author who had a high reputation for writings of this kind, the object being to deceive purchasers, and give the work a value which it would not otherwise have possessed, judgment was given for the defendants. Chief Justice Tindal, in the case referred to (*a*), drew a distinction between such a work and books of instruction or amusement which have been published as translations, whilst they have, in fact, been original works, or which have been published under an assumed instead of a true name. Such, for instance, as 'The Castle of Otranto,' professing to be translated from the Italian, and such the case of innumerable works published under assumed names—voyages, travels, biographies, works of fiction or romance, and even works of science and instruction; for, in all these instances the misrepresentation is innocent and harmless. But the facts stated in the pleas in the case under consideration imported a serious design on the part of the plaintiff to impose on the credulity of each purchaser, by fixing on the name of an author who had a real existence, and who possessed a large share of weight and estimation in the opinion of the public. The object of the plaintiff was, not merely to conceal the name of the genuine author, and to publish opinions to the world under an innocent disguise, but it was to practise upon some of the best feelings of the public, namely, their religious feelings; and thus to induce them to believe that the work was the original work of the author whom he named, when he knew it not to be so. The transaction, therefore, ranged itself under the head of *crimen falsi*. It was a species of obtaining money under false pretences; and as the very act of publishing the work, and the sale of the copies to each individual purchaser, were each liable to the objection above stated, the Chief Justice thought the plaintiff could not be considered as having a valid

(*a*) *Wright* v. *Tallis* (1845), 1 C. B. 893; 14 L. J. (C.P.) 283: 9 Jur. 916.

and subsisting copyright in the work, the sale of which produced such consequences, or that he was capable of maintaining an action in respect of its infringement. Cases in which a copyright has been held not to subsist, where the work is one which is subversive of good order, morality, or religion, did not bear, he thought, on the case before him, but they had so far analogy, that the rule which denied the existence of copyright in those cases, was the rule established for the benefit and protection of the public (*a*).

So decided on the ground of fraud.

This decision proceeded more on the ground of fraud than invasion of literary property, and to the principle of this decision may also be referred the case of *Seeley* v. *Fisher* (*b*), where an injunction was granted to restrain A. from putting forth his work under advertisements which the court below thought tended to produce the impression, contrary to the truth, that it contained matter which was in fact the property of B. But if there be no such fraudulent misrepresentation, but only statements which, whether true or false, tend merely to encourage a belief that the matter contained in A.'s work is truly valuable matter, and that contained in B.'s is spurious and of no value, an injunction will not be granted to restrain such representations; and on the ground that such was the true effect of the advertisements, in the last cited case, the Lord Chancellor dissolved the injunction.

Where the plaintiff was the well-known writer and com-

(*a*) In a suspension and interdict brought to prevent infringement of the copyright of a book of designs for trade circulation, the complainers stated that they were a firm of artistic ironfounders, that they had prepared for gratuitous circulation, and had entered at Stationers' Hall, a book containing some 3500 designs of goods supplied by them, and that the respondents had violated the complainers' copyright by publishing a similar book containing a material portion of the designs in the complainers' book. The respondents in answer stated, *inter alia*, that the complainers' book contained many statements which to the knowledge of the complainers were untrue, were intended to mislead the public, and were contrary to public policy, in particular that the complainers had in their book untruly described as "registered" and "patent," and advertised for sale as "registered" and "patent," designs and articles which had never been registered or patented, or of which the registration or patent had expired before the publication of the complainers' book, or which had been improperly registered and patented. Eight instances were given of designs represented as registered which had never been registered, and twenty-eight of designs which had ceased to be registered, and a large number of instances of each of the other classes of alleged misrepresentation were also given. On these averments the respondents pleaded that the complainers having thus fraudulently and wrongfully violated the statutes dealing with the copyright and registration of designs, their book was not entitled to the protection of the Court. It was held that it was no answer to an action to prevent infringement of the copyright in a book that its author had in some incidental cases made such mistakes as might involve him in a penalty under the Copyright of Designs Act, and that as the respondents' averments did not raise the case of a book calculated to make money by misrepresentation, or which had something connected with its publication against public morals, these averments were irrelevant. *Macfarlane & Co.* v. *Oak Foundry Co.*, March 16, 1883, 10 R. 801.

(*b*) (1841), 11 Sim. 581.

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poser of songs and music called 'Claribel,' the defendants were the music publishers carrying on business under the name of "Sinclair and Co.," and it appeared that four songs named respectively 'Under the Willows,' 'Spinning by her Cottage Door,' 'I'll cast my Rose on the Waters,' and 'Spring Carol,' the words only of which were written by 'Claribel,' had been published and sold by the defendants, with the name of 'Claribel' appearing on them thus "'Under the Willows,' song written by Claribel," no mention being made of the name of the composer of the music of the song; and it was contended by the plaintiff that the above mode of publication was intended to deceive, and had deceived, people into the belief that not merely the words, but also the music of these songs was by 'Claribel,' and he prayed that the defendant might be restrained from so publishing; the Master of the Rolls held that the injunction must be refused, as he was of opinion that the words "written by" referred only to the words of the songs, and did not mean "written and composed," and that ordinary purchasers using ordinary caution could not be deceived into thinking that the music was composed by 'Claribel' (*a*).

But where a publisher advertised for sale certain poems, which he represented to be the work of Lord Byron, who was abroad, an injunction was granted until answer or further order to restrain the publication, Lord Byron's agents deposing to their belief that the poems were not Lord Byron's work and to circumstances rendering it highly improbable that they were so, and the defendant refusing to swear to his belief that they were written by Lord Byron (*b*).

(*a*) *Barnard* v. *Pillow*, W. N. (1868). 94.
(*b*) *Lord Byron* v. *Johnston* (1816), 2 Meriv. 29; 16 R. R. 135.

CHAPTER III.

TERM OF COPYRIGHT, AND IN WHOM VESTED.

Term of copyright.

MANY have agitated for the establishment of a perpetual copyright, together with the bestowal upon authors of the exclusive power of abridging, dramatising, and metamorphosing their own works at will, turning prose into poetry, romances into plays, and *vice versâ*. The claim of authors resulting from the principles of natural right involves the perpetual duration of the property. But in order that such property should be of value, it is necessary that society should interfere actively for its protection. Society will not ordinarily be willing to apply penal remedies in favour of an exclusive right, further than it finds such a course beneficial to its own interests, in the broadest sense of the term. It is argued, however, that the concessionary allowance of a perpetuity in copyright would encourage publication, and tend greatly to the promotion and furtherance of science and literature. But admitting that learning and science should be encouraged, that everything tending or conducible to the advancement of knowledge, and consequently to the happiness of the community, should be favoured and tenderly cherished by the legislature, and that the labour of every individual should be properly recompensed, it does not follow that the same or a similar end might not be obtained by different and less objectionable means.

If the individual is a gainer by the existence of perpetual copyright, society is a loser. The absurdity of the assertion that authors are alone inclined to make known their works from the specific benefit arising from an absolute perpetual monopoly, is manifest. What a studied indignity to those who have devoted their lives to the advancement of every science that adorns the annals of literature! Ambition cannot be deemed a cipher; benevolence will ever exist in the heart of man, and they at least act as powerfully by way of conducives to the communication of knowledge between man and man, as avaricious or mercenary motives.

Considerations respecting a perpetuity in copyright.

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The effect of a perpetuity in copyright.

A perpetuity in copyright would have the effect of impeding the progress of literature and science, and among other serious inconveniences there is this one. The text of an author, after two or three generations, if the property be retained so long by his descendants, would belong to so many claimants, that endless disputes would arise as to the right to publish, which in all probability might prevent the publication altogether. The Emperor Napoleon is reported to have stated this objection in council, with his characteristic practical wisdom as follows:—

The Emperor Napoleon's opinion of a perpetuity.

"*Napoléon dit que la perpétuité de la propriété dans les familles des auteurs aurait des inconvénients. Une propriété littéraire est une propriété incorporelle qui, se trouvant dans la suite des temps et par le cours des successions divisée entre une multitude d'individus, finirait, en quelque sorte, par ne plus exister pour personne ; car, comment un grand nombre de propriétaires, souvent éloignés les uns des autres, et qui, après quelques générations, se connaissent à peine, pourraient-ils s'entendre et contribuer pour réimprimer l'ouvrage de leur auteur commun? Cependant, s'ils n'y parviennent pas, et qu'eux seuls aient le droit de le publier, les meilleurs livres disparaîtront insensiblement de la circulation.*

"*Il y aurait un autre inconvénient non moins grave. Le progrès des lumières serait arrêté, puis qu'il ne serait plus permis ni de commenter, ni d'annoter les ouvrages ; les gloses, les notes, les commentaires ne pourraient être séparés d'un texte qu'on n'aurait pas la liberté d'imprimer.*

"*D'ailleurs, un ouvrage a produit à l'auteur et à ses héritiers tout le bénéfice qu'ils peuvent naturellement en attendre, lorsque le premier a eu le droit exclusif de le vendre pendant toute sa vie, et les autres pendant les dix ans qui suivent sa mort. Cependant, si l'on veut favoriser davantage encore la veuve et les héritiers, qu'on porte leur propriété à vingt ans*" (*a*).

Again, it would seem to us most unfortunate if legislation were to render it impossible for anybody to reproduce an old book with annotations.

Those who argue in favour of a restricted period for copyright, speak of it as a monopoly: whilst upholders of copyright in perpetuity speak of the author's right to prevent others multiplying copies of his work as a right of property. But those who argue upon the basis of property appear sometimes to overlook the fact that a book is also property and that, by the common law, the owner of a chattel has absolute dominion

(*a*) Locré, *Législation civile de la France*, tit. ix. pp. 17–19; Renouard, *Droits d'Auteurs*, tom. 2, p. 387.

over it; but the copyright laws, in effect, restrict this absolute dominion in the case of a purchaser of a book the term of copyright in which has not expired. In truth, the controversy is not one that can be decided by a mere phrase, but by a consideration of what protection an author can reasonably demand to ensure an adequate return for his labours, it being generally admitted that literature cannot, in these days, be expected to flourish in a country possessing lax, or insufficient, copyright laws (*a*).

Though we could not, therefore, uphold a perpetual copyright, believing that its existence would by no means tend to the spread or encouragement of literature, we would willingly offer our support to the extension of the period during which literary copyright is at present protected.

Present term of copyright.

The 3rd section of the 5 & 6 Vict. c. 45, enacts that the copyright in every book which shall after the passing of that Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns; provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years.

Posthumous works

The copyright in every book which shall be published after the death of its author is, by the same section, to endure for the term of forty-two years from the first publication thereof, and to be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

Collaborations.

In the case of works written in collaboration, it is probable that the term is forty-two years, or seven years from the death of the longest liver, whichever period shall be the longer. There is no express provision in the statute to this effect, but, by virtue of section 2, the word "author" is to include "authors"; and a work could not well be partly in the public domain, and partly in the private (*b*).

As to copyright subsisting at the

In case of books published before the passing of the Act and in which copyright then subsisted, the 4th section provides

(*a*) Perpetual copyright is at the present day conceded only in Guatemala, Mexico, and Venezuela, countries which have not generally been considered pioneers in civilization.

(*b*) There is a decision in France in accordance with this opinion. Trib. civ. Seine, 7 April, 1869, Aymat-Dignat, Pataille, 69, 252. Pouillet (2nd. Ed.), p. 160, cf. *Hole* v. *Bradbury* (1879), 12 Ch. D. 886. It might, however, be contended that as copyright is conferred on an "author," which includes "authors," the term is during the joint lives and seven years after.

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time of passing of Copyright Act, 1842.

that the copyright shall be extended and endure for the full term provided by the Act in cases of books thereafter published, and shall be the property of the person who at the time of the passing of the Act shall be the proprietor of such copyright. But it is further provided that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by the Act, but shall endure for the term which shall subsist therein at the time of the passing of the Act, and no longer, unless the author of such book if he shall be living, or his personal representative if he shall be dead, and the proprietor of such copyright, shall before the expiration of such term consent to accept the benefits of the Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to the Act to be entered in the registry at Stationers' Hall, in which case such copyright shall endure for the full term provided in cases of books published after the passing of the Act, and shall be the property of such person or persons as in such minute shall be expressed (*a*).

Judicial Committee of Privy Council may license republication of certain books.

The 5th section, in order to provide against the suppression of books of importance to the public, provides that the Judicial Committee of Her Majesty's Privy Council may, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit (*b*).

Meaning of the word "book."

The term "book" by virtue of the interpretation clause is to be construed to signify and include every volume, part, or division of a volume (*c*), a pamphlet, sheet of letter-

(*a*) See *Marziais* v. *Gibbons* (1874), L. R. 9 Ch. App. 58.

(*b*) This section seems to have been put in force with regard to Sir Kenelm Digby's 'Broadstone of Honour.'

The Royal Commissioners in their report on copyright recommend that the term shall be for life and thirty years from his death in cases of books published in the author's lifetime and with his name; and for thirty years from the date of the deposit of the book for the use of the British Museum as to works published anonymously or after the death of their authors, and as to cyclopædias; but that if the author of an anonymous work publishes in his lifetime an edition bearing his name he should be entitled to copyright therein for his life and thirty years after his death.

(*c*) See the *University of Cambridge* v. *Bryer* (1812), 16 East, 317; *The British Museum* v. *Payne* (1828), 2 Y. & J. 166; *Clayton* v. *Stone*, 2 Paine (Amer.) 383; *Scoville* v. *Toland*, 6 West L. J. (Amer.) 84. But a label used in the sale of an

press (*a*), sheet of music, map, chart, or plan separately published. But a separate article, advertised to form part of a periodical publication, is not a book within the meaning of the Act, and therefore does not require registration under the 24th section (*b*).

What is a publication?

The copyright is, we have seen, to run from the date of the publication of the work, consequently it will be necessary to inquire what, in the eye of the law, may be regarded as equivalent to publication (*c*). In *Coleman* v. *Wathen* (*d*), it was said that the acting of a dramatic composition on the stage was not a publication within the statute of Anne. The plaintiff, it appears, had purchased from O'Keefe the copyright of an entertainment called the 'Agreeable Surprise,' and the defendant represented this piece upon the stage. The mere act of repeating such a performance from memory was held to be no publication. On the other hand, to take down from the mouths of the actors the words of a dramatic composition, which the author had occasionally suffered to be performed, but never printed or published, and to publish it from the notes so taken down, was deemed a breach of right; and the publication of the copy so taken down was restrained by injunction (*e*).

Gratuitous circulation when a publication.

A presentation of copies, on the part of the author, may not amount to a publication, but the gratuitous circulation generally would seem to be so (*f*).

Abbott, C.J., in *White* v. *Geroch* (*g*), considered that a *sale* of copies of a work in manuscript amounted to a *publication* of the work from which the statutory period would commence to run, and, referring to this opinion, Mr. Sweet, in his notes to Bythewood and Jarman's Conveyancing (*h*), says "this construction, if well founded, would apply to the recent Act." He admits there is no direct authority on the point; but he states

article is not a book: *Clifton* v. *Brunton*, 1 McLean (Amer.) 517; see *ante*, p. 36.

(*a*) See *Clementi* v. *Goulding* (1809), 2 Camp. 25; 11 East, 244; *Hime* v. *Dale* (1803), 2 Camp. 27 a; *White* v. *Geroch* (1819), 2 B. & Ald. 298; *Davis* v. *Comitti* (1885), 1 T. L. R. 216; *Hollinrake* v. *Truswell* (1894), 3 Ch. 420.

(*b*) *Murray* v. *Maxwell* (1860), 3 L. T. 466.

(*c*) The use of letters as evidence in a court is not publication: 7 Byth. & Jarm., by Sweet, 628, note (*a*).

(*d*) (1793) 5 T. R. 245: see *Roberts* v. *Myers*, 13 Mo. Law. Rep. (Amer.) 397; *Crouce* v. *Aiken*, Amer. Law. Rep. L. Jour. vol. 5, No. 226. But see, now, 5 & 6 Vict. c. 45, s. 20. *post*, Musical and Dramatic Copyright.

(*e*) *Macklin* v. *Richardson* (1770), Amb. 694, cited 2 Kent's Com. 378.

(*f*) *Vide Novello* v. *Ludlow* (1852), 12 C. B. 177; 16 Jur. 689; 21 L. J. (C.P.) 169: *Dr. Paley's Case*, cited 2 V. & B. 23; *Alexander* v. *Mackenzie*, 9 Sess. Cas. 2nd series, 748.

(*g*) (1819), 2 B. & Ald. 298; S. C. 1 Chit. Rep. 24.

(*h*) Vol. 7, p. 626.

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that it seems clear that a *gratuitous* circulation of copies of a work among friends and acquaintances would not amount to a publication; quoting in support of this proposition the *Duke of Queensberry* v. *Shebbeare* (*a*); and *Dr. Paley's Case*, where the bookseller was restrained from publishing manuscripts left by Dr. Paley for the use of his own parishioners only. The distinction is in the limit of the circulation, if limited to friends and acquaintances it would not be a publication, but if general, and not so limited, it would be.

Private distribution of lithographic copies.

So the distribution of lithograph copies of music for private use, and not for the purpose of sale or exportation, has been held to be a publication, but on the other hand it is clear that a private circulation for a restricted purpose is not a publication. Thus, in *Prince Albert* v. *Strange* (*b*) it appeared that her Majesty and the late Prince Consort had given to their intimate friends lithographic copies of drawings and etchings which they had made for their own amusement. This was held to be a private circulation of copies, and hence not a publication.

Circulation among pupils of a system of book-keeping.

In an American case (*c*) it appeared that the plaintiff, who was a teacher of book-keeping, had written his system of instruction on separate cards, for the convenience of giving instruction to his pupils. He had permitted them to copy these cards for their own convenience, and to enable them to instruct others. The defendant published copies of the cards, which he had obtained while a pupil in the school, and maintained that the plaintiff, by permitting his manuscripts to be so copied, had abandoned them to the public. The court, however, held this to be a private circulation of copies, which did not prejudice the owner's common law rights. "The students of Bartlett who made these copies," said Mr. Justice McLean, "have a right to them and their use as originally intended. But they have no right to a use which was not in the contemplation of the complainant and of themselves when the consent was first given . . . . The lecturer designed to instruct his hearers, and not the public at large. Any use, therefore, of the lectures which should operate injuriously to the lecturer would be a fraud upon him for which the law would give him redress."

Publication not a question of

The question of publication does not depend on the number of copies sold or given away; because the sale of one copy

(*a*) (1758), 2 Eden. 329.
(*b*) (1849), 2 De. G. & Sm. 652; 1 Mac. & G. 25.
(*c*) *Bartlett* v. *Crittenden* (1849), 4 McLean, 300; 5 Id. 32; *Rees* v. *Peltzer*, 75 Ill. (Amer.) 475.

only is as clearly a publication as is the sale of ten thousand. Nor can it be essential that a single copy be disposed of before the work can be said to be published, for the work is published when it is publicly offered for sale. The act of publication is the act of the author, and cannot be dependent upon the act of a purchaser. Printing does not amount to publication, for it is obvious that it may be withheld from the public long after it is in print. To constitute publication it is necessary that the work shall be exposed for sale or offered gratuitously to the general public, so that any person may have an opportunity of enjoying that for which copyright is intended to be secured.

number of copies sold.

The publication of a part of a book is not a publication of the whole; neither is the publication of a pianoforte arrangement of an opera, nor that of a few of the orchestral parts, a publication of the opera itself (*a*).

Publication of part not a publication of the whole.

The previous publication of a work abroad disqualifies it for copyright in this country, except under the provisions of the International Copyright Acts (*b*). If, however, the publication here and abroad be simultaneous, the publication abroad will not stand in the way of copyright in this country (*c*). The legislature contemplates publication *here* and *here only*, and it contemplates such publication only when made by the author, or with such consent and authority from him as the statute requires (*d*).

Work must be first published in this country or simultaneously with that in another.

So where the work was composed before June 1814, and in that month the author sanctioned a publication of it in France, and five copies of it were deposited in a musical depôt in Paris; in July 1814, the author made a verbal arrangement with the plaintiff, and the latter published in the September following; it was held, that the publication was not such a publication by the author as to entitle him to the statutory privilege (*e*).

That the publication must be on British soil scarcely

Publication must be on British soil.

(*a*) *Boosey* v. *Fairlie* (1877), 7 Ch. D. 301. But publication of a story in parts in a magazine is equivalent to publication in book form, *Holmes* v. *Hurst* (1898), 174 U. S. Rep. (Amer.) 82: *Mifflin* v. *R. H. White* (1902), 190 U. S. Rep. 260: *Mifflin* v. *Dutton*, *ib.* 265.

(*b*) See *Clementi* v. *Walker* (1824), 2 B. & C. 861; 26 R. R. 569; *Guichard* v. *Mori* (1831), 9 L. J. (O.S.) (Ch.) 227; *Delondre* v. *Shaw* (1828), 2 Sim. 237; *Page* v. *Townsend* (1832), 5 Sim. 395; *Boucicault* v. *Delafield* (1863), 1 H. & M. 597; 23 L. J. Ch. 38; *Hedderwick* v. *Griffin*, 4 Sess. Cas., 2nd Series, 383. See *McFarlane* v. *Hulton* (1899), 1 Ch. 884, as to where a work is published.

(*c*) *Cocks* v. *Purday* (1846), 2 Car. & Kirw. 269; *Routledge* v. *Low* (1868), L. R. 3 H. L. 100.

(*d*) *Per* Bayley, J., *Clementi* v. *Walker* (1824), 2 B. & C. 861; *Chappell* v. *Purday* (1845), 4 Y. & C. 485; 14 M. & W. 303; *Guichard* v. *Mori*, *supra*.

(*e*) *Clementi* v. *Walker*, *supra*. See *Reid* v. *Maxwell* (1886), 2 T. L. R. 790.

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admits of a doubt. The words of the 3rd section are "every book which shall be published," without saying where; but it was held prior to 1886 that it would be inconsistent with the usual practice of the Imperial Parliament to create a system of copyright law for all the colonies and dependencies of the empire, and that consequently a work published in the colonies did not obtain British copyright (*a*). In deciding this question Lord Cairns said: "But there are, as it seems to me, still clearer indications in the Act of the intention of the legislature on this point. By the 8th section copies of every book are to be delivered to various public libraries in the United Kingdom within one month after demand in writing; an enactment which in the case of a publication at the antipodes could not be complied with. By the 10th section penalties for not delivering these copies are to be recovered before two justices of the county or place where the publisher making default shall reside, or by action of debt in any court of record in the United Kingdom. By the 11th section the book of registry of copyrights and of assignments is to be kept at Stationers' Hall, in London, and no registry is provided for the colonies. By the 14th section a motion to expunge or vary any entry in this registry is to be made in the Court of Queen's Bench, Common Pleas, or Exchequer. These clauses are intelligible if the publication is in the United Kingdom, but hardly so if it may be in India or Australia. Finally by the 17th section there is a provision against any person importing into any part of the United Kingdom, or any other part of the British dominions, for sale or hire, any copyright book first composed or written, or printed and published in any part of the United Kingdom, and reprinted in any country or place out of the British dominions; a provision showing clearly, as it appears to me, that publication in the United Kingdom is indispensable to copyright" (*b*). So far as the British possessions are concerned, the law has now been altered by the International Copyright Act, 1886 (*c*), and colonial works do obtain British copyright, but the above-cited decision holds good with regard to publication in foreign countries.

An Englishman resident abroad may have a copyright.

A residence abroad by an English subject, or the fact of the work having been composed abroad, either by an Englishman or a foreigner, would not have the effect of preventing the author from acquiring a copyright in this country. On this point

(*a*) *Routledge* v. *Low* (1865), L. R. 3 H. L. 100. (*b*) *Per* Lord Cairns, *ib.*
(*c*) 49 & 50 Vict. c. 33, s. 8, and see *post*, Colonial Copyright.

there can be no doubt, for independent o the peculiar wording of the copyright statute and under the old Act of Queen Anne this was decided, the reason assigned being, that an English subject, though resident abroad, does not by such residence throw off his natural allegiance; he cannot be relieved from it, and therefore carries with him the natural rights of a subject of England wherever he goes (*a*). That gives him, though resident abroad, the right of publishing and acquiring a copyright here, because he has always fulfilled the implied condition of being a subject of, and owing allegiance to, the crown of Great Britain (*b*).

Copyright no existence in the law of nations.

Copyright has no existence in the law of nations; it acquires a power simply by the municipal law of each particular community. "As soon," observes Mr. Curtis (*c*), "as a copy of a book is landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

Persons who may claim copyright.

The only persons who can claim the copyright in a book published before the 1st of July, 1842, are the proprietor on that day of the copyright therein, or his assigns; and in the case of a book since published, the author or his assigns.

Can an alien acquire copyright in this country?

The important question arises whether an alien can acquire copyright under the 5 & 6 Vict. c. 45? Of course, he clearly cannot do so, except under the International Copyright Acts, if he publishes his work abroad before he does so in the United Kingdom (*d*); but there is, unfortunately, no express decision whether, supposing him to publish first in the United Kingdom, any condition of residence is attached to his acquiring copyright in this country. It may, however, be laid down, first, that he, undoubtedly, acquires copyright if he is resident in any part of the British Dominions at the moment of publication in the United Kingdom (*e*), and, secondly, that he *probably* acquires it wherever he is resident.

(*a*) But British subjects under certain circumstances may, under the Naturalization Act of 33 Vict. c. 13, free themselves from their allegiance, and may resume it again.

(*b*) *Jefferys* v. *Boosey* (1854), 4 H. L. C. 985. (*c*) 'Copyright,' 22.

(*d*) See *ante*, p. 89.

(*e*) The United Kingdom embraces England and Wales, Scotland and Ireland; while the British Dominions include "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown, which now are or hereafter may be acquired." 5 & 6 Vict. c. 45 s. 2.

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Certainly, if resident within British Dominions at time of publication.

First, then, an alien author may acquire copyright by first publishing in the United Kingdom, if he be within the British Dominions at the time of publication. This was expressly decided in the case of *Routledge* v. *Low* (*a*), where an American authoress had gone to Canada with the object of being there at the moment of the publication in England. It matters not where the author has composed the work, nor whether he goes into the realm with the sole purpose of being there at the time of publication, and leaves when publication has taken place. His presence is not necessary for any definite period, it is only necessary that he be on British soil at the time of publication (*b*). The author must be there in person—the presence of his assignee, publisher, or agent is not sufficient to bring him within this rule. "Every alien coming into a British colony," said Turner, L.J. (*c*), "becomes temporarily a subject of the crown—bound by, subject to, and entitled to the benefit of, the laws which affect all British subjects," and he is, therefore, clearly an "author" within the meaning of the statute.

Probably, wherever resident.

Secondly, an alien author probably acquires copyright by first publishing in the United Kingdom, wherever he be resident at the time of publication. The decisions upon this point under the statute of Anne were conflicting (*d*), until in the case of *Jefferys* v. *Boosey* (*e*), in the year 1854, the House of Lords finally decided that under that statute an alien could not acquire copyright in England, if he were on foreign soil at the moment of publication.

Jefferys v. *Boosey.*

In that case Bellini, a foreign musical composer, resident at that time in his own country, composed, in the year 1831, his opera 'La Sonnambula,' in which, by the laws there in force, he had a copyright. He then assigned to Ricordi (another foreigner also resident there), according to the laws of their country, his right to the copyright in the composition of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and, before publication, assigned it, according to the forms required by the laws of this country, to an Englishman. The first publication took place in this country. The work was subsequently pirated,

(*a*) (1868), L. R. 3 H. L. 100; 37 L. J. (Ch.) 454; 18 L. T. 874: *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815; *Buxton* v. *James* (1851), 5 De. G. & Sm. 80; 16 Jur. 15; *Ollendorf* v. *Black* (1850), 4 De. G. & Sm. 209; 20 L. J. (Ch.) 165.

(*b*) Suppose he went on board a British vessel?

(*c*) *Low* v. *Routledge* (1865), L. R. 1 Ch. App. 42, 47.

(*d*) *Chappell* v. *Purday* (1845), 14 M. & W. 303; *Cocks* v. *Purday* (1846), 5 C. B. 860, and *Boosey* v. *Davidson* (1849), 13 Q. B. 257, *pro*; *Boosey* v. *Purday* (1849), 4 Ex. 145, *contra*.

(*e*) (1854), 4 H. L. C. 815; 1 Jur. (N.S.) 615; 24 L. J. (Ex.) 81.

and proceedings instituted which ultimately reached the Upper House. The judges were called upon for their opinions, which they delivered *seriatim*, six judges being in favour of the plaintiff and four in favour of the defendant, but judgment was finally pronounced by the House in favour of the defendant. The grounds of the decision were that an Act of Parliament of this country, having within its view a municipal operation only, and being therefore limited to this kingdom, cannot be held to extend beyond our own subjects, except as both statutes and common law so provide for foreigners *when they become resident here*, and owe at least a temporary allegiance to the sovereign, and thereby acquire rights just as other persons do; not because they are foreigners, but because being here, they are here entitled, in so far as they do not break in upon certain rules, to the general benefit of the law for the protection of their property, in the same way as if they were natural-born subjects. "Where an exclusive privilege," said Lord Cranworth (*a*), "is given to a particular class at the expense of the rest of Her Majesty's subjects, the object of giving that privilege must be taken to have been a national object; and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. When I say that the legislature must *primâ facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects,' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here, and composing and publishing a book here, is an author within the meaning of the statute; he is within its words and spirit. I go further; I think that if a foreigner having composed, but not having published a work abroad, were to come to this country, and the week or day after his arrival, were to print and publish it here, he would be within the protection of the statute. This would be so if he had composed the work after his arrival in this country, and I do not think any question can be raised as to when and where he composed it. So long as a literary work remains unpublished at all, it has no existence, except in the mind of its author, or in the papers in which he, for his own convenience, may have embodied it. Copyright, defined to mean the exclusive right of multiplying copies, commences at the instant of publication; and if the author is at that time in England, and while here

(*a*) 4 H. L. C. at p. 955 (Ex. 81); *Low* v. *Routledge*, 10 Jur. (N.S.) 922; 10 L. T. (N.S.) 838.

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he first prints and publishes his work, he is, I apprehend, an author within the meaning of the statute, even though he should have come here solely with a view to the publication. The law does not require or permit any investigation on a subject which would obviously, for the most part, baffle all inquiry, namely, how far the actual composition of the work itself had, in the mind of its author, taken place here or abroad. If he comes here with his ideas already reduced into form in his own mind, still, if he first publishes after his arrival in this country, he must be treated as an author in this country. If publication, which is (so to say) the overt act establishing authorship, takes place here, the author is then a British subject, wherever he may, in fact, have composed his work. But if at the time when copyright commences by publication, the foreign author is not in this country, he is not, in my opinion, a person whose interests the statute meant to protect."

Routledge v. *Low.*

The case of *Jefferys* v. *Boosey* related to a work that had been first published in the year 1831, and, therefore, was decided under the old Copyright Act of Queen Anne and not under the present Copyright Act; but, in the year 1868, the case of *Routledge* v. *Low* (*a*) came before the House of Lords for decision under the later Act. The actual point did not, however, arise, for the authoress was in fact resident in Canada at the moment of publication, but both Lord Westbury and Lord Cairns expressed the opinion that the decision ought to have been the same wherever she had been resident. In the opinion of Lord Westbury the case of *Boosey* v. *Jefferys* was a decision attached to and dependent on the particular statute of which it was the exponent; and that statute having been repealed, and replaced by another Act, with different enactments expressed in different language, could not be considered a binding authority on the exposition of this latter statute. "The Act," said his Lordship, "secures a special benefit to British subjects by promoting the advancement of learning in this country, which the Act contemplates as the result of encouraging all authors to resort to the United Kingdom for the first publication of their works. The benefit of the foreign author is incidental only to the benefit of the British public. Certainly the obligation lies on those who would give the term 'author' a restricted signification to find in the statute the reasons for so doing." "The Act," he remarks in another place, "appears to have been dictated by a wise and liberal

(*a*) (1868), L. R. 3 H. L. 114; 37 L. J. (Ch.) 454; 18 L. T. 874.

spirit, and in the same spirit it should be interpreted, adhering of course to the settled rules of legal construction. The preamble is, in my opinion, quite inconsistent with the conclusion that the protection given by the statute was intended to be confined to the works of British authors. On the contrary, it seems to contain an invitation to men of learning in every country to make the United Kingdom the place of first publication of their works, and an extended term of copyright throughout the whole of the British dominions is the reward of their so doing. So interpreted and applied, the Act is auxiliary to the advancement of learning in this country. The real condition of obtaining its advantages is the first publication by the author of his work in the United Kingdom. Nothing renders necessary his bodily presence here at the time, and I find it impossible to discover any reason why it should be required, or what it can add to the merits of the first publication. It was asked, in *Jefferys* v. *Boosey*, why should the Act (meaning the statute of Anne) be supposed to have been passed for the benefit of foreign authors? But if the like question be repeated with reference to the present Act the answer is, in the language of the preamble, that the Act is intended 'to afford greater encouragement to the production of literary works of lasting benefit to the world (*a*); a purpose which has no limitation of person or place . . . If the intrinsic merits of the reasoning on which *Jefferys* v. *Boosey* was decided be considered (and which we are at liberty to do, for it does not apply to this case as a binding authority), I must frankly admit that it by no means commands my assent."

"Protection," said Lord Cairns, "is given to every author who publishes in the United Kingdom, wheresoever that author may be resident, or of whatever state he may be the subject. The intention of the Act is to obtain a benefit for the people of this country by the publication to them of works of learning, of utility, of amusement. The benefit is obtained, in the opinion of the legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his work here. This is, or may be, a benefit to the author, but it is a benefit given, not for the sake of the author of the work, but for the sake of those to whom the work is communicated. The aim of the legislature is to increase the common stock of the literature of the country; and if that stock can be increased

(*a*) The Act of Anne was passed for the "encouragement of learned men to compose and write useful books."

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by the publication for the first time here of a new and valuable work, composed by an alien, who never has been in the country, I see nothing in the wording of the Act which prevents, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the protection of the Act, in return and compensation for the addition he has made to the literature of the country. I am glad to be able to entertain no doubt that a construction of the Act so consistent with a wise and liberal policy is the proper construction to be placed upon it." To this view, however, Lord Cranworth (*a*) objected, and Lord Chelmsford doubted whether it was good in law.

Present state of the authorities.

The point has not again come up for decision before our Courts. Possibly foreign authors have preferred the protection of the International Copyright Acts; or possibly, they have found the King's dominions so wide that they have preferred the expense of a few days' residence on British soil to that of giving their name to a leading case. In the year 1870 was passed the Naturalization Act, 1870 (33 Vict. c. 14), the 2nd section of which enacts that "real and personal property of *every description* may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject," but it is doubtful if this statute is relevant, for the issue seems to depend not upon the capacity of a foreigner to hold property, but upon the true intent of the Copyright Act.

In the year 1891, however, there was passed in the United States of America the statute known as the Chace Act. Up till that year foreigners had been unable to obtain copyright in that country, and the object of that Act was to enable them to do so (*b*), provided they were citizens of a state or country that "permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens." The Act further provides that the existence of

(*a*) Lord Cranworth was a party to the decision in *Jefferys* v. *Boosey*.

(*b*) It is worth while to note the way in which this was effected. Section 4952 of the Revised Statutes of the United States originally read, "Any citizen of the United States or resident therein, who shall be an author of any book . . . shall have the sole liberty of printing," &c., the same. The Chace Act struck out the opening words of this section, so that it now reads "the author of any book . . . shall have the sole liberty of printing," &c., the same: and then Section 13 provides that the Act is only to apply to a foreigner under certain conditions.

these conditions is to be determined by the President of the United States by proclamation. The question then arose whether Great Britain fulfilled the necessary conditions to entitle her citizens to the benefit of the Chace Act, and the President required from her late Majesty's Government an assurance that residence in the British dominions was not essential to enable a citizen of the United States to obtain copyright in a book published by him in England. This assurance Lord Salisbury, after having taken the opinion of the law officers of the Crown, gave to the President in a despatch dated the 16th June, 1891.

It is, therefore, only reasonable to suppose that when this question next arises our Courts will give their decision in accordance with the views expressed by Lord Cairns and Lord Westbury in the case of *Routledge* v. *Low* (*a*).

(*a*) On the subject-matter of these cases, the Royal Commissioners on Copyright reported in 1878 as follows :—"We recommend, generally, that where a work has been first published in any one of your Majesty's possessions, the proprietor of such work shall be entitled to the same copyright, and to the same benefits, remedies, and privileges in respect of such work as he would have been entitled to under the existing Imperial Act, if the work had been first published in the United Kingdom.

"With regard to publication in foreign states, the law now is that, except under treaty, no copyright can be obtained if a book has been published in any foreign country before being published in the United Kingdom, but it is doubtful whether contemporaneous publication in this and a foreign country would prevent the acquisition of copyright here.

"It is a grave question whether it is desirable that the condition requiring first publication in this country should continue, and whether the reason advanced for this condition, namely, that it is advantageous to this country that works should be first published here, outweighs the hardship that may be inflicted upon British authors by preventing them from availing themselves of arrangements which they might otherwise make with foreign or colonial publishers.

"We have come to the conclusion that a British author who publishes a work out of the British dominions should not be prevented thereby from obtaining copyright within them by a subsequent publication therein. Yet we think that such republication ought to take place within three years of the first publication, and we may add that we think the law should be the same with reference to dramatic pieces and musical compositions first performed out of your Majesty's dominions, even though they are not printed and published—in other words, that first performance in a foreign country should not injure the dramatic right in this country. It has been decided under the 19th section of the International Copyright Act, that the writer of a drama loses his exclusive right to the performance of his drama here in England, if it has been first performed abroad ; that is to say, representation has been held to be a publication. We see no reason why the rule which may be finally determined upon in reference to first publication of books should not apply to first representation of dramatic pieces. The evidence shows how hardly the present law presses upon British dramatic authors.

Suggestion as to aliens.

"As to aliens, although we would give them the same rights as British subjects if they first publish their works in the British dominions, it is obvious that the same reason does not exist for giving them copyright if they do not bring their books first to our market ; and we therefore recommend that aliens, unless domiciled in your Majesty's dominions, should only be entitled to copyright for works first published in those dominions. It is to be borne in mind that, even though aliens may be deprived of British copyright by first publication abroad, they may still obtain it in many cases by means of treaties.

Suggestions as to persons

"With regard to the persons who are capable of obtaining imperial copyright in your Majesty's dominions, as distinguished from international copyright under

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Term in periodicals.

The 19th section of the Copyright Act, 1845, provides that the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or a work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under the Act, on entering in the registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published before the passing of the Act, and the name and place of abode of the proprietor thereof, and of the publisher thereof when he is not also the proprietor. Under this section it is clear that as each part of a periodical is a book within the meaning of the Act, and copyright runs from the date of publication of any book, that the copyright in each part accrues from the publication of each part, so that if a subsequent part be published twelve years after the publication and registration of the first part all the benefit of registration will accrue for forty-two years from the publication of the subsequent part, notwithstanding that registration has only been effected of the first part (*a*).

Such portion of a work as is first published in this country will be protected.

If only a portion of a work be first published in this country (*b*), or within the scope of the British Copyright Act, it will be protected. A., a citizen of the United States, published a work of which he was the author, in monthly parts between January and December, 1867, of a magazine published in the United States. In October 1867, A. went to reside in Canada for the purpose of acquiring a British copyright, and during such residence, when the work wanted

capable of holding copyright.

treaty, we find that, according to the existing law the author in order to obtain copyright must be either—

"(*a*) A natural-born or naturalised subject of your Majesty, in which case the place of residence at the time of publication of the book is immaterial; or,

"(*b*) A person who, at the time of the publication of the book in which copyright is to be obtained, owes local or temporary allegiance to your Majesty, by residing at that time in some part of your Majesty's dominions.

"Besides these, it is probable, but not certain, that an alien friend who first publishes a book in the United Kingdom, even though resident out of your Majesty's dominions, acquires copyright therein. We think this doubt should be set at rest, and that, subject to our previous recommendations as to place of publication by aliens not domiciled in your Majesty's dominions, the benefit of the copyright laws should extend to all British subjects and aliens alike." Par. 58–64.

(*a*) *Bradbury* v. *Sharp*, W. N. (1891) 143, where the first number only of a periodical is registered, an injunction will be granted against infringement, to protect future numbers.

(*b*) See *Reid* v. *Maxwell* (1886), 2 T. L. R. 790.

six chapters for completion in the magazine, an edition of the whole was published in London under an agreement between A. and the plaintiff, an English publisher. A cheap reprint taken from the pages of the 'American Magazine' having been subsequently published in this country by the defendant, it was held that the copyright was divisible and could be claimed for a portion of the book only; and accordingly the publication by the defendant of the last six chapters of the work was restrained by injunction (*a*).

The Government may own a copyright.

A manuscript or a copyright may be owned by the government or a corporation as well as by an individual, and the rights of the government or corporation are governed by the same principles as those of an individual owner (*b*). So statutes, judicial decisions, public documents, official reports, and productions which are the direct results of official labour, become the property of the government which pays for such services. But the government can have no proper claim to the literary property in a work produced by an officer independently of his official duties.

Works written on commission, encyclopædias, and periodicals.

Copyright is not necessarily vested in, nor is its term necessarily to be measured by the life of, the person who composes the work. This follows from section 18 of the Act 5 & 6 Vict. c. 45, which is as follows:—"When any publisher or other person shall before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work,

(*a*) *Low* v. *Ward* (1868), L. R. 6 Eq. 415; 37 L. J. (Ch.) 841; but see *Routledge* v. *Low* (1868), 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874; L. R. 3 H. L. 100; *cf.* *Leslie* v. *Young* (1894), A. C. 335.

(*b*) *Marzials* v. *Gibbons* (1874), L. R. 9 Ch. 518. *Quære*, as to the term of copyright in such cases. See *McLean* v. *Moody*, 20 Sess. Cas. 1154, cited Phillips on Copy. p. 55.

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and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that *in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature*, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly, without the consent previously obtained, of the author thereof, or his assigns: Provided, also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid."

Scope and effect of this section.

This is an exceedingly ill-drafted and puzzling section, and many difficult questions arise as to its construction. Its effect appears to be to put the publisher or projector in the place of the author, to vest the copyright in him, and to make the term of copyright depend upon his life and not on that of the author. It is submitted, however, that the section is limited to works of the character of encyclopædias, magazines, and periodicals, and that it does not apply to the case of a publisher requesting an author to compose a book for him on a particular subject. It is true that at the commencement of the section the draftsman has used the expression "any book whatsoever" (though later on he seems to have forgotten it); but it is conceived that the publisher, in the circumstances supposed, neither "projects, conducts, and carries on" the book, nor is the "proprietor" of a work which has no existence when he gives his commission (*a*).

(*a*) *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Pierpont* v. *Fowle*, 2 Wood &

In order to give the proprietor of an encyclopædia or periodical a copyright in articles composed for him by others, under the above section he must establish three things—(1) Employment by him of the writer to compose the articles; (2) that the articles were composed on the terms that the copyright should belong to the proprietor; and (3) that the articles were paid for by him. As to this last requirement, it will not be sufficient to show a contract for payment: there must be actual payment (*a*).

When are articles written on the terms that the copyright shall belong to the proprietor?

In order to comply with requirement number 2, it is not necessary that there be an express contract that the proprietor is to have the copyright. The fact of the author being paid by the proprietor for articles supplied expressly for the encyclopædia or periodical raises the presumption that the copyright is intended to be the property of the proprietor. Otherwise the articles might be published by the writers thereof simultaneously, or shortly afterwards; possibly to the detriment and injury of the purchasers of the articles for the particular periodicals.

Sweet v. *Benning*.

Thus, in *Sweet* v. *Benning* (*b*) the plaintiffs were the publishers of 'The Jurist,' and had employed various lawyers to prepare reports of cases for that periodical. Nothing was said as to the copyright. The Court of Common Pleas held that there must be presumed an implied agreement that the copyright was to be the property of the employers. "It was urged," said Maule, J., "that these reports were not written on the terms that the copyright therein should belong to the proprietors of 'The Jurist,' because there were no express words in the contract under which they were written conferring upon them the right to the copyright. But, though no express words to that effect are stated in this special case, I think that where a man employs another to write an article, or to do anything else for him, unless there is something in the surrounding circumstances, or, in the course of dealing between the parties, to require a different construction, in the absence of a special agreement to the contrary, it is to be

Min. (Amer.) 23; *Atwill* v. *Ferrett*, 2 Blatch. (*ibid.*) 36; *Binns* v. *Woodruff*, Wash. (Amer.) 53.

(*a*) *Richardson* v. *Gilbert* (1851), 1 Sim. (N.S.) 336; 20 L. J. (Ch.) 553; 15 Jur. 389. See *Brown* v. *Cooke* (1846), 11 Jur. 77; 16 L. J. (Ch.) 140; *Trade Auxiliary Co.* v. *Middlesbrough, &c., Association* (1889), 40 Ch. D. 425; *Collingridge* v. *Emmott* (1887), 57 L. T. 864; 4 T. L. R. 99.

(*b*) (1855), 16 C. B. 459; cf. *Bishop of Hereford* v. *Griffin* (1848), 16 Sim. 190; *Walter* v. *Howe* (1881), 17 Ch. D. 708, in which latter case, however, *Sweet* v. *Benning* was not cited. In *Johnson* v. *Newnes* (1894), 3 Ch. 663, Romer, J., found, on the facts, that a contributor to a periodical had not parted with the copyright to the proprietor.

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understood that the writing or other thing is produced upon the terms that the copyright therein shall belong to the employer, subject of course, to the limitation pointed out in the 18th section of the Act."

Lamb v. *Evans.*

Again, in a case where the plaintiffs were the proprietors of a trades directory and the defendants were employed to obtain advertisements to be inserted in the directory, for which they were paid by the plaintiffs, but there was no express agreement as to the person in whom the copyright was to be vested, it was held that it was vested in the plaintiff. "If there is no express agreement" [as to whom the copyright is to be vested in] said Lindley, L. J., "the question is, which is the inference to be drawn from the circumstances of the case? In drawing the inference regard must be had to the nature of the articles . . . and the view expressed by Mr. Justice Maule in *Sweet* v. *Benning*, may be very safely acted upon, viz., that *prima facie* at all events, you will infer, in the absence of evidence to the contrary, from the fact of employment and payment that one of the terms was that the copyright should belong to the employer. That is not a necessary inference; but in a case of this sort, where any other inference would be unbusiness-like, I should not hesitate myself to draw that inference" (*a*).

Lawrence & Bullen v. *Aflalo.*

These decisions were approved by the House of Lords in the recent case of *Lawrence & Bullen* v. *Aflalo* (*b*). There the respondent Aflalo was employed by the appellants, a firm of publishers, to edit an encyclopædia on sport, and it was a term of the agreement that the former was to be remunerated for his editorial services by a lump sum, for which he was to contribute certain articles without further fee. The respondent Cooke was also employed by the appellants to contribute certain articles to the encyclopædia at so much per thousand words. No express agreement was made as to copyright. The respondents duly contributed their articles, and the encyclopædia was published. Afterwards the appellants published a book called 'The Young Sportsman,' containing copies of articles written by the respondents for the encyclopædia, and the respondents sought to restrain them from doing so. Mr. Justice Joyce held that the circumstances were not such as to warrant the inference that the copyright was to belong to the publishers, and granted an injunction to restrain the publishers from publishing the articles in separate form (*c*). Upon appeal, this decision was affirmed by Romer and Stirling, L.J.J.,

(*a*) *Lamb* v. *Evans* (1893), 1 Ch. 218.
(*b*) (1904), A. C. 17; 20 Times L. R. 42.
(*c*) (1902), 1 Ch. 264.

dissentiente Vaughan Williams, L.J. (*a*), but the House of Lords reversed the decisions of both Joyce, J., and the Court of Appeal, holding that, upon the facts, the copyright was vested in the proprietors of the encyclopædia (*b*). The House of Lords considered that the question in whom the copyright was vested depended on an inference of fact, and not of law, to be drawn by a reasonable man, from the nature of the contract and all the circumstances. From this point of view the House considered it was not reasonable to suppose that the appellants had paid their money for the right to publish the articles in their encyclopædia, at the same time leaving it open to the respondents to publish their articles the next day in separate form. The House considered that the case was covered by *Sweet* v. *Benning* and *Lamb* v. *Evans*.

What copyright the employer obtains under sect. 18.

If the absolute copyright vests in the proprietor of an encyclopædia or a work published in a series of books or parts, he will have all the rights of an author, including, of course, the right to publish the articles separately; but if the publication in question be not an encyclopædia, but a review, magazine, or other periodical work of a like nature, section 18 of the Act provides that the proprietor can only acquire, at the most, a limited copyright; for it says that in such a case "after the term of twenty-eight years from the first publication [of essays, articles, or portions published in such a review, &c.] the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act." During the first twenty-eight years, again, the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns (*c*); but authors can by contract reserve to themselves, during the twenty-eight years, a right of separate publication of the articles contributed by them, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical.

What is the effect of

Contributors to periodical literature generally, it is believed,

(*a*) (1903), 1 Ch. 318. (*b*) (1904), A. C. 17; 20 T. L. R. 42.

(*c*) There is, apparently, no power for the author, unless he has reserved copyright, to take proceedings to prevent piracy of his article during the first twenty-eight years. The Copyright Commissioners recommended that he should be given such a power and that he should be permitted to publish in separate form after three years from publication. That the proprietor can sue for infringement, see *Henderson* v. *Maxwell* (1877), 4 Ch. D. 163. In the case of *Trade Auxiliary Co.* v. *Middlesbrough, &c., Association* (1889), 40 Ch. D. 425, three newspapers combined to employ a person to collect information to be published in each of their papers. It was held that each newspaper had a separate copyright in respect of which it could sue.

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expressly reserving copyright to author?

expressly reserve to themselves the copyright or right of separate publication, but a serious question has been raised whether this has the effect of giving them the exclusive right of separate publication. It is asked, under what section of the Act do they obtain copyright? Clearly in the case of a contributor to an encyclopædia there is nothing in section 18 to give him copyright, for the last proviso to the section is not applicable and he must fall back upon the general right given by sections 2 and 3 to the author of a book. But section 2 defines "book" to mean "every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan *separately published*," and it has been argued that, where an article has been first published in an encyclopædia, it has not been "separately published." In the case of a contribution to a periodical, the proviso to section 18 does enact that when an author reserves the right of separate publication he "shall be entitled to the copyright in such composition," but it adds, "when published in a separate form." It has been contended, therefore, that an author who has so reserved his rights cannot sue for infringement until he has published in separate form.

Johnson v. *Newnes.*

These points were first clearly raised in the case of *Johnson* v. *Newnes* (*a*). There the plaintiff had contributed certain short stories to the proprietors of a newspaper called the 'Weekly Dispatch' for publication in that paper, and on the terms, as it was held, that the copyright should remain vested in the author. One of these stories was copied by the defendant's paper, 'Tit-Bits,' and it was held that the plaintiff was entitled to sue in respect of this infringement of his copyright, though he had not at the time of action published his stories except in the 'Weekly Dispatch.' Mr. Justice Romer, in giving judgment, after stating that, in his opinion, the proviso to section 18 only applied to a case where the author had parted in the first instance with the copyright in his work, said: "The next question that arises is this: Has an author who has not parted with his copyright the right to sue an infringer before the author has published his story in a form apart from the form in which it has appeared in a periodical publication? It is said that he has not, not because of the proviso at the end of section 18, for I have already

(*a*) (1894), 3 Ch 636. The point might have been raised in *Bishop of Hereford* v. *Griffin* (1848), 16 Sim. 190 (a case of an encyclopædia). *Mayhew* v. *Maxwell* (1860), 1 J. & H. 312, and *Smith* v. *Johnson* (1863), 4 Giff. 632, were both cases where contributors to *magazines* were seeking to restrain the proprietors from publishing their contributions separately from the original work during the first twenty-eight years.

dealt with that, but because, it is said, looking at sections 2 and 3 of the Copyright Act, that the author did not acquire the copyright in these separate stories because there had been, and has been up to the present time, no separate publication of those stories in accordance with section 2 of the Act. Now, in my opinion, if you find in a volume separate parts, each distinguished or perfectly distinguishable from the other parts, and the volume is published, each part that is separate and clearly distinguished in the volume itself is separately published within the meaning of section 2. To hold the contrary would lead, I may say, to absurdities, and obviously to great injustice being done. That has been pointed out in the course of the argument before me, and I need not point it out more in detail in this judgment. If that were not the correct view, amongst other results this would follow: that if the author of one story joined with the author of another story, and they published both stories in one volume, neither author could sue for an infringement of his story so published unless he took the pains first to take his own story out of the book in which the two stories had been published and publish it separately and by itself. In my judgment such an absurd result is not caused by the Copyright Act. I think that the true construction of 'separately published,' as used in section 2, is that which I have indicated."

Afflalo v. *Lawrence & Bullen.*

In *Afflalo* v. *Lawrence & Bullen* (*a*) the question was whether contributors of articles to an encyclopædia could restrain the proprietors from publishing the articles in another form. In the Court of Appeal Vaughan Williams, L.J., held that the contributors could not have copyright under sections 2 and 3, inasmuch as the articles had not, in his judgment, been separately published, the encyclopædia being, as he considered, "a complete publication in itself." Romer and Stirling, L.J.J., differed from this view, Romer, L.J., adhering to the opinion he had expressed in *Johnson* v. *Newnes* both as to the meaning of the words "separately published" and as to the effect of the last proviso to section 18. "My further consideration," he said, "of the proviso still leads me to the conclusion that the proviso is only addressed to the case where, under the provisions of the first part of the section, the author has parted with his copyright." Stirling, L.J., likewise thought that the articles "being distinguished from the rest of the volumes in which they are found" were separately published within the meaning of section 2; and he was not prepared to differ from

(*a*) (1903). 1 Ch. 318; 72 L. J. (Ch.) 107; 87 L. T. 605; 51 W. R. 360.

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the construction put upon the last proviso of section 18 by Romer, L.J. This decision was reversed on other grounds, by the House of Lords, the House expressly refraining from giving any opinion as to the meaning of the words "separately published" (*a*).

It is respectfully submitted that the decision of Romer, L.J., in *Johnson* v. *Newnes* is sound, and that an article or contribution published in an encyclopædia or a periodical is "separately published" within the meaning of section 2, if it can be clearly distinguished in the volume in which it is originally published from the other parts of the volume (*b*).

Courses open to contributor to encyclopædia or periodical.

If the construction above referred to put upon the last proviso to section 18 by Romer, L.J., be correct, then an author who is asked to contribute to an encyclopædia or periodical may, apparently, adopt either of three courses: (1) He may contribute on the terms that the copyright shall remain vested in him (in this case, semble, the author is entitled to copyright under sections 2 and 3, and the proprietor of the encyclopædia or periodical is merely his licensee); or (2) he may contribute on the terms that the copyright shall vest in the proprietor, but reserving to himself the right to publish his contribution in separate form (in this case, apparently, the proprietor has copyright under the first part of section 18, and the author under the last proviso to that section when he publishes in separate form, *sed quære*); or (3) he may contribute simply on the terms that the copyright shall vest in the proprietor (in this case the proprietor has copyright under section 18 and, if the work be an encyclopædia, he can at any time publish the contribution in separate form, but, if the work be a periodical, neither the proprietor nor the author is at liberty to publish the contribution in separate form during twenty-eight years after publication (*c*). At the end of that period the author may do so).

Right of contributor to periodical to restrain separate publication by proprietor.

If a contributor to a periodical has adopted the last alternative, the right which he has under section 18 to restrain the proprietor from publishing his article separately is not copyright and he need not register his article before taking proceedings (*d*). In the case of *Smith* v. *Johnson* (*e*) where the plaintiff had composed certain tales, under the common title

(*a*) (1904), A. C. 17.

(*b*) And see *Leslie* v. *Young* (1894), A. C. 335, where part only of a publication was held entitled to copyright. *Hayward Bros.* v. *Lely* (1887), 56 L. T. 418; *Low* v. *Ward* (1868), L. R. 6 Eq. 415.

(*c*) *Mayhew* v. *Maxwell* (1860), 1 J. & H. 312.

(*d*) *Ib.*

(*e*) (1863), 4 Giff. 632.

of 'The Chronicles of Stanfield Hall,' for the defendant to publish in the 'London Journal,' of which he was the proprietor, it was held that the subsequent publication of such tales in a weekly supplementary number, for sale with or without the current number was "a publication separately" within the meaning of section 18.

It is submitted that the proprietor of a compilation may have copyright in the whole, without proving that he has copyright in each separate article.

Suggested alteration of law.

The law on the subject of encyclopædias and periodicals is not in a very satisfactory state, and by the recent Copyright Bill of 1900 it was proposed to provide that where a person is the owner of an encyclopædia, review, magazine, newspaper, or other collective work, and employs some other person in the composition of such work, or any part thereof, he shall, if he has paid for such composition, and in the absence of any agreement to the contrary, be entitled to the copyright of such collective work in the original form of publication only for the term of his life, and thirty years after the end of the year in which he dies, in the same manner as if he had been the author thereof. Provided that the contributor of any article to such review, magazine, newspaper, or other collective work shall, after the lapse of two years from the end of the year in which it was first published, be entitled to the copyright in such article as a separate work for a similar term. He shall also during such period of two years be authorised to institute any proceedings for infringement of the copyright in his article, without prejudice to the right of the proprietor of the magazine, review, newspaper, or other like work to institute like proceedings.

An employer may be the "author" of a work.

Apart from the provisions of section 18, a person may be an author though he does not compose the work. If an employer merely suggests a subject to a writer, the former clearly is not the "author" (*a*); but the case is different where the employer does more than suggest the subject, and has a share in or solely designs the execution of the work. Thus, in *Barfield* v. *Nicholson* (*b*), Sir John Leach said: "I am of opinion that, under the statute (8 Anne, c. 19), the person who forms the plan, and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar

(*a*) *Shepherd* v. *Conquest* (1856), 17 C. B. 427. See 24 L. J. (C.P.) 127; 2 Jur. (N.S.) 236.

(*b*) (1824), 2 Sim. & Stu. 1; 2 L. J. Ch. (O.S.) 90; 25 R. R. 144; *Heine* v. *Appleton*, 4 Blatch. (Amer.) 125.

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requirements, that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions contribute to it, is the author and proprietor of the work, if not within the literal expression, at least within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally."

On this principle was determined the case of *Hatton* v. *Kean* (*a*), where the defendant, with the aid of scenery, dresses, and music, adapted one of Shakespeare's plays to the stage, and found the general design of the representation. He employed the plaintiff, a well-known musician named Hatton, for reward, to compose, and he did compose, as part of the representation, and as accessory to the dramatic piece, a musical composition, which formed part of the dramatic piece, on the terms that the defendant should have the liberty of representing and permitting to be represented the said musical composition with the dramatic piece as part thereof. And it was held that the defendant had the sole right of representing the entire dramatic piece, including the plaintiff's musical composition, and that he violated no right of the plaintiff within the 3 & 4 Will. 4, c. 15 (*b*), and the 5 & 6 Vict. c. 45, by representing, without the plaintiff's consent in writing, the entire dramatic piece, including the plaintiff's musical composition. The reason assigned was that, though the plaintiff was the author of the musical composition, it appeared that the defendant was the author and designer of the entire dramatic work, and with respect to a part, accessory to that whole (that whole consisting of something produced by the skill of the defendant in its entirety), he employed the plaintiff. The production by the plaintiff would be a part of the whole, and the defendant would have the sole right of performing and representing the entire piece in conjunction with the music.

In this case there was an agreement to the effect that the music should be the property of the employer, but in a later case the Court, on the supposed authority of *Hatton* v. *Kean*, went much further. Matthews, the manager of the St. James's Theatre, had employed Wallenstein to furnish music for that theatre. The latter engaged and paid the musicians, supplied the instruments and compositions, and conducted the orchestra.

(*a*) (1859), 8 W. R. 7; see *Hazlitt* v. *Templeman* (1866), 13 L. T. (N.S.) 593; *Stannard* v. *Harrison* (1871), 24 L. T. (N.S.) 570; *Springfield* v. *Thame* (1903), 19 Times L. R. 650; *Little* v. *Gould*, 2 Blatch. (Amer.) 165; *Lawrence* v. *Dana*, 2 Am. L. T. R. (N.S.) 402; *Commonwealth* v. *Desilver*, 3 Phila. (Pa.), Amer. 31.

(*b*) *Vide post*, Musical and Dramatic copyright.

Besides playing general orchestral music for the theatre, it was his duty to provide incidental music for dramas, when necessary; and such music he might either select or compose. In performance of this duty he composed incidental music for 'Lady Audley's Secret,' a drama brought out by Matthews, but of which the latter was not the author, and at that time was not even the owner. In composing the music the plaintiff had received no assistance from the manager, and had himself found the paper on which the music was written, and employed a person to copy the various orchestral parts from the original score. These parts the composer kept in his own possession, nor did the theatre have a library of music. When the engagement between Matthews and Wallenstein had ended, the former obtained from the latter a duplicate copy of the music, with permission to use it "on a provincial tour." Afterwards, when the defendant, Miss Herbert, had succeeded Matthews in the management of the St. James's Theatre, and Wallenstein had ceased to be the musical director, she obtained permission from Matthews to represent 'Lady Audley's Secret,' of which play he was then the owner, and received from him the duplicate copy of the music which Wallenstein had made for him. The original score was still in the possession of the composer, who had given no consent either to Matthews or to Miss Herbert to use the music in London.

The Court held that the controlling facts in the case were not different from those in *Hatton* v. *Kean;* that the music became an inseparable part of the drama, and was not an independent composition; that Matthews, by virtue of the contract of employment, had acquired an unlimited right to use the music; and that the defendant, as the licensee of Matthews, was also entitled to use it (*a*).

It is submitted that this case was not rightly decided. He who arranges music for any instrument is the author of such arrangement, though he may not be the composer of the music.

The arranger is the author of the arrangement though not the composer of the music.

The question may occasionally arise as to whether persons agreeing to arrange a piece together, become joint authors in the production, and frequently much difficulty is experienced in deciding what constitutes joint authorship. If there be a joint co-operation in carrying out the same design, it is not essential that the execution of the design should be equally divided. Having agreed to a general design and structure they may divide their parts, and work separately. The pith

As to joint authorship.

(*a*) *Wallenstein* v. *Herbert* (1866), 15 L. T. (N.S.) 364 on app. (1867), 16 *Id.* 453.

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of the joint authorship consists in the co-operation in a common design, and whether this co-operation takes place subsequently to the formation of the design by the one, and is varied in conformity with the suggestions or views of the other, it has equally the effect of creating a joint authorship as if the original design had been their joint conception. But where there are merely some additions or improvements made to a complete piece, intended to render it more acceptable and attractive, the person making such additions or improvements does not thereby become joint author. The subject was fully debated in the case of *Levy* v. *Rutley* (*a*). It appeared from the evidence that in 1837 the plaintiff, who was then proprietor of the Victoria Theatre, employed a Mr. T. E. Wilks, author of about fifty other dramas, to write a play to suit the company employed at his theatre, for which Wilks was to be paid twenty guineas. 'The King's Wager' was accordingly composed by Wilks, and delivered to the plaintiff in October of that year. Before it was acted, upon the complaint of his stage manager, plaintiff requested Wilks to come to the theatre to make some alterations. Wilks promised to come, but never appeared, and certain alterations were made by the plaintiff and the stage manager, after which the play was acted with considerable success, and was continued at the Victoria for six weeks.

Wilks was never, in fact, paid his twenty guineas, the plaintiff refusing to pay him that sum on the ground that he had been compelled to make so many alterations. At length Wilks agreed to accept fifteen guineas, and he gave a receipt for £4 15*s*., "on account of fifteen guineas, for my share, title, and interest as co-author with the plaintiff in the drama," and he was to receive the balance on assigning his share. No assignment was executed and Wilks died without receiving the balance of the fifteen guineas. The play was afterwards published as altered by the plaintiff, and the defendant had caused it to be represented at the theatre of which he was the lessee. It was shown that the plot of the piece as designed by Wilks was not in any way altered by the plaintiff; his additions and variations consisted only of improvements of the parts of some of the subordinate characters, and a new scene, together with some changes in words and directions.

The Court of Common Pleas were of opinion that joint

(*a*) (1871), L. R. 6 C. P. 523; *Maclean* v. *Moody*, 20 Sc. Sess. Cas. 2nd Ser. 1154.

authorship consisted in the co-operation of two or more authors in a common design, and not the alteration by one author of the work of another, without the latter's consent or ratification: that the admission of co-authorship in the receipt did not alter the facts, and that a mere receipt for money on account was no assignment. As to the joint authorship Mr. Justice Byles said: "It is admitted that Wilks wrote most of the play, and that plaintiff made only a series of small alterations: the plaintiff, therefore, cannot be said to have been the sole author, even if the declaration had been framed so as to enable him to make his claim on that ground. If there were an execution by two or more persons of one common design for a dramatic piece, it might constitute joint authorship, although one person had contributed a very small amount of work to the execution; there is nothing here to show any common design between Wilks and the plaintiff, and on these short grounds I am of opinion that the verdict should be entered for the defendant." And in this opinion both Mr. Justice Keating and Mr. Justice Smith coincided, the latter adding: "Although one of the persons engaged should actually write a much greater part of the work than the other, still they might possibly be joint authors. Here Wilks was employed to write as an author, and he did write a complete play; Levy considered the play might be improved, and wrote a new scene, and made various alterations. The question for us is whether that constituted him joint author with Wilks, the original author. What is the scope of these alterations? The main plot is the same now as in the original play, and it is only alleged that Levy merely improved and touched up some parts. There seems to have been no agreement between the two, or intention on Wilks' part that they should have been joint authors originally. I suppose there are few instances in which alterations have not been made by managers after plays are written and before they are acted, and if in this case after the piece was first brought to Levy, there had been a joint remodelling of the play by Levy and Wilks together, they might have become joint authors; but the evidence fails to establish any such proceeding. Reliance was placed upon the words of Wilks' receipt of the money paid him on account 'for my share, title, and interest, as co-author with' Levy; as we are in this case judges of fact, we may consider the circumstances under which this receipt was given. It might be evidence that they considered themselves to be co-authors at that time, but that statement of itself did not make them so,

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it was not an admission binding upon third persons, and, as I think, was not warranted by the facts" (*a*).

One of several proprietors may sue for infringement.

If there be two or more proprietors of a copyright they are not joint tenants, but their rights are akin to those of tenants in common (*b*); and any one or more of them may maintain an action against a stranger for an infringement of the entire copyright (*c*).

Abandonment of copyright.

It has been said that an author may by his conduct or by his express desire *abandon* his copyright, and give to the public a right to publish his work before the time when his copyright would expire (*d*). There is no authority on the point, and it is difficult to say what amount of evidence the court would require as to the fact of a dedication of a copyright to the public.

Abandonment of copyright not presumed from book being out of print.

But it is clear that a proprietor of a copyright does not lose his right of publication, by permitting his book to remain out of print and obsolete for any number of years (*e*). The copies may have been all sold, but he may exercise the right he has of republication at such periods as he thinks likely to answer his purpose and when he considers he can best find purchasers. It is a matter on which he has a right to exercise his own judgment.

Nor does the proprietor of a copyright lose his right to prevent an infringement by reason of his not having proceeded against a prior infringement of which he had no knowledge. In one case it was argued that by reason of certain prior infringements having been passed by unrestrained, therefore the proprietor had lost his right to prevent any subsequent infringement, but the plaintiff stating that he was not aware of the prior infringement the court declined to entertain the

(*a*) 24 L. T. Rep. (N.S.) C. P. 621; L. R. 6 C. P. 523, to which report of the case is appended a note in which it is stated that the question of joint authorship of a dramatic piece came under consideration in a case of *Shelley* v. *Ross*, tried before Hannen, J., in the Bail Court, without a jury, on the 7th of June, 1871. The circumstances of that case were very similar to those of the principal case: and the learned judge distinctly laid it down that alterations in a dramatic piece, for the purpose of rendering it more attractive or better adapted for stage representation, did not constitute the person making them a "joint author." See also *Springfield* v. *Thame* (1903), 19 Times L. R. 650, 89 L. T. 242, where plaintiff had sent a written account of an event to a newspaper, the sub-editor of which altered the account, and the altered account was inserted in the newspaper, the sub-editor was held to be the "author," but the decision is difficult to follow.

(*b*) *Powell* v. *Head* (1879), 12 Ch. D. 686.

(*c*) *Lauri* v. *Renad* (1892), 3 Ch. 402; *Trade Auxiliary Co.* v. *Middlesbrough, &c., Association* (1889), 40 Ch. D. 425.

(*d*) 4 Burr. 2346, 2367, 2466; and see 2 Stark. N. P. C. 382; 4 Camp. N. P. C. 8, n.; *Platt* v. *Button* (1813), 19 Ves. 447; *Folsom* v. *Marsh*, 2 Story's R. (Amer.) 109; *Rundell* v. *Murray* (1821), Jac. Rep. 311–316; see *Bartlett* v. *Crittenden*, 4 McLean (Amer.) 303; 5 *ib.* 41.

(*e*) *Weldon* v. *Dicks* (1878), 10 Ch. Div. 247.

argument. There can only be acquiescence where there is knowledge, and the court will not assume that there is acquiescence where there is no knowledge, though it is true that knowledge and acquiescence are in many cases fatal to the parties.

Effect of unlimited right to publish.

In a case (*a*) where the plaintiff gave her manuscript to a publisher, with a parol licence to publish it at his own risk and expense, and disclaimed any intention to receive any emolument from it, and the defendant published it for fourteen years (the first term under the statute then in force) and continued to publish and sell it afterwards, and the plaintiff then applied for an injunction to restrain its further publication by the defendant: Lord Eldon refused the injunction, upon the ground that the defendant had been licensed to publish without any limitation of time. The question, however, was left undecided whether the right to publish did not remain in the plaintiff concurrently with the defendant, or whether the defendant had acquired any right as against the public. The defendant's counsel expressly disclaimed any title to the copyright, admitting that there was no legal assignment of it. The case therefore proceeded upon the effect of a parol licence to publish, and shows that such licence conveys no copyright to the exclusion of the author.

(*a*) *Rundell* v. *Murray* (1821), Jac. Rep. 311; 23 R. R. 75; *Cooper* v. *Stephens* (1895), 1 Ch. 567.

CHAPTER IV.

REGISTRATION OF COPYRIGHT.

The Book of Registry.

A BOOK OF REGISTRY is kept by the Company of Stationers, and the object of the entries therein is clearly shown by the 2nd section of the Statute of Anne. The entry is deemed equivalent to notice of the existence of the copyright in the particular book or article registered. Unless such entry had been provided, many, through ignorance, would have offended (*a*). By the Statute of Anne it was enacted that no person should be subjected to the forfeitures or penalties therein mentioned in cases of infringement of copyright, unless the title to the copy of such book should, before publication, be entered in the register book of the Stationers' Company (*b*).

The Statute of Anne was, however, repealed and incorporated in that of the 5 & 6 Vict. c. 45, the 11th section of which provides that a book of registry, wherein may be registered the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of the Act, which shall at all convenient times be open to inspection on payment of 1*s.* for every entry which shall be searched for or inspected in the same book; and that such officer shall, whenever reasonably required, give a copy of any entry, certified under his hand, and impressed with the stamp of the said company, to any person requiring the same on payment to him of 5*s.* (*c*); and such copies shall be received in evidence in all courts, and in all summary proceedings, and shall be

Copy of register *primâ facie* evidence.

(*a*) Sect. 2 of the 8 Anne, c. 19.

(*b*) *Ibid.*, and see Malins, V.-C., in *Cox* v. *The Land and Water Co.* (1869), 18 W. R. 206; see *ante*, p. 21.

(*c*) Under the present Stamp Act, the Stamp Act of 1891, a stamp of 1*s.* is required to be impressed upon a certified copy of the entry, because it is an entry on a public register.

primâ facie proof of the proprietorship (*a*) or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid; and that making a false entry in the book of registry, or wilfully producing or causing to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, shall be deemed an indictable misdemeanour, and punished accordingly. It provides, further (section 13), that it shall be lawful for the proprietor of the copyright in any book to make entry in the said registry book of (1) the title of such book (*b*), (2) the time of the first publication (*c*), (3) the name and place of abode of the publisher (*d*), and (4) the name and place of abode of the proprietor, in a form given in the schedule annexed to the Act, upon payment of 5*s.* to the officers of the said company. Section 24 provides that no proprietor of copyright under the Act shall sue or proceed for any infringement before making entry in the book of registry.

What to be entered.

Neglect to register on the part of the official at Stationers' Hall prevents the author having the benefit of the statute as against the public (*e*).

The provisions of the Act in respect of registration must be strictly complied with, or the title of the owner of the copyright to sue will be imperilled. Thus, it is essential that the name of the author or composer, if he be the proprietor of the copyright, be correctly stated in the register, and where B. adapted the music of N. so as to make it an independent composition, it was held that it was insufficient to describe the work as that of N. (*f*); though there is nothing either in the Act or the form of certificate given in the schedule requiring registration of the person who has composed the work, or mention of his name, if at the date of registration the proprietors of the copyright are properly described (*g*). So the insertion in the register of the wrong day of publication, or an inaccurate

Entry must be correct.

(*a*) *Hildesheimer & Faulkner* v. *Dunn & Co.* (1891), 64 L. T. 452; W. N. (1891), 66; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

(*b*) *Thomas* v. *Turner* (1886), 33 Ch. Div. 292, 296.

(*c*) *Collingridge* v. *Emmott*, W. N. (1887), 216; 57 L. T. 861; *Mathieson* v. *Harrod* (1868), L. R. 7 Eq. 272.

(*d*) *Chappell* v. *Davidson* (1855), 18 C. B. 194; *Weldon* v. *Dicks* (1878), 10 Ch. D. 252; *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627; 49 L. T. (N.S.) 339; *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. 99; *Wooderson* v. *Tuck* (1887), 4 T. L. R. 57.

(*e*) See *Cassell* v. *Stiff* (1856), 2 K. & J. 279.

(*f*) *Wood* v. *Boosey* (1868), L. R. 2 Q. B. 340; affirmed in Exch. Ch. L. R. 3 Q. B. 223.

(*g*) *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452, 455.

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statement of the names of the publishers, or their firm, renders the entry on the registry invalid. A proprietor of copyright in a book, registered his book by making an entry, purporting to be pursuant to the Act, but in such entry the exact date of first publication was not stated, the day of the month being omitted, and the month and year only inserted; on his filing a bill to restrain a party from infringing his copyright, the court held, that the suit could not be maintained, as the entry was defective, there being no entry of the date of first publication as required by the statute, unless, in addition to the month and year, the day of the month is also stated (*a*).

Full name of firm must be set out.

And where the entry in the registry of the name of the publishers was "Sampson Low, Son, and Marston," whereas the name of the firm was "Sampson Low, Son, and Co.," the variance being the addition of the third name of the partner in the firm, instead of the term "Company," the entry was held invalid. "One almost regrets," said Kindersley, V.-C., in the case in which these two last points were decided (*b*), "to be obliged to come to the consideration of points which are so very technical as these which I am obliged to consider; but at the same time they are points not only which a defendant or plaintiff has a right to take, but which are of importance with reference to the carrying out of the clearly expressed intention of the legislature which has thought fit to require, in order to produce certain effects, that certain strict particulars shall be complied with. . . . Now though it is probably optional either to enter the name of the firm of publishers, or the names of the individuals composing that firm, if you profess to enter the real name of the firm you must do so. And looking again at the statement in the bill, I find in express terms, that the name of the firm is not 'Sampson Low, Son, and Marston,' but 'Sampson Low, Son, and Co.' I am almost ashamed to descend to these minute particulars, but it must be done, and it is sufficient for me to say that in my opinion either of these inaccuracies (that of the date of assignment, and name of publishers) is quite sufficient to lead me to hold that the entry of the proprietorship is insufficient, and, upon that ground, that there is no valid assignment effected by the subsequent entry which immediately follows that of the assignment." And it is absolutely necessary that the name of the *first*

(*a*) *Mathieson* v. *Harrod* (1868), L. R. 7 Eq. 270; 38 L. J. (Ch.) 139; 19 L. T. (N.S.) 629; 17 W. R. 99; *Wood* v. *Boosey*, *supra*; *Collette* v. *Goode* (1878), 7 Ch. Div. 842; *Low* v. *Routledge* (1865), 33 L. J. (N.S.) Ch. 717; *Collingridge* v. *Emmott* (1887), 57 L. T. 864; W. N. (1887). 216: 1 T. L. R. 99.

(*b*) *Low* v. *Routledge*, *supra*.

publisher of the book be duly entered on the register, otherwise the registration is defective and the owner cannot sue upon his title for infringement (*a*).

Proprietor may be registered as trustee for another.

A person may be properly on the register as proprietor of the copyright who is in fact a trustee for another, but in such a case it must be proved that the copyright is vested in the trustee. In *London Printing Co.* v. *Coe* (*b*), K. and Co. were the registered owners of the copyright and entered into an agreement to sell it to the A. Co. In an action by the A. Co. (who had registered) and K. and Co. for infringement, it was disputed whether the letter in which the agreement for sale was embodied operated as an assignment of the copyright from K. and Co. to the A. Co., or merely as an agreement to assign it. Upon this point the Judges differed, Vaughan Williams, J., as Judge of first instance, and Lindley, L.J., in the Court of Appeal, being of opinion that it was only an agreement to assign, Fry and Lopes, L.J.J., being of the contrary opinion, namely, that it operated as an actual assignment; but all the Judges were clearly of opinion that if K. and Co. had not assigned, but had only agreed to assign, they were correctly registered as proprietors and could sue as trustees for the A. Co. In the result, the action was dismissed on the ground that the A. Co. were the proprietors of the copyright, but incompetent to take proceedings because they were not registered.

Again, in a case where a book with illustrations was prepared on behalf of a limited Company who paid for them, but registration was taken, in accordance with the usual practice of the Company, in the name of Wesley Taylor, the managing director, an action brought by Wesley Taylor and the Company was dismissed on the ground that, the copyright being vested in the Company, Wesley Taylor was not properly registered as proprietor, and there was no registration in the name of the Company (*c*). "It is said," remarked Kekewich, J., "that he [Wesley Petty] is a trustee for the Company. It is more easy sometimes to say that a man is a trustee than to explain how he is a trustee, or why. In one sense he is a trustee for the Company. I have no doubt that if he can properly be held to be the proprietor of this copyright, he is so far a trustee of his proprietorship for the Company that he cannot set up his own title against his principals; but he is

(*a*) *Coote* v. *Judd* (1883), 23 Ch. Div. 727; 31 W. R. 423; 48 L. T. 205; 53 L. J. (Ch.) 36; *Chappell* v. *Davidson* (1855), 18 C. B. 194; *Weldon* v. *Dicks* (1878), 10 Ch. Div. 252.

(*b*) (1891), 3 Ch. 291; 66 L. J. Ch. 707; 65 L. T. 60; 7 T. L. R. 738.

(*c*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

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not a trustee in the sense that any legal ownership ever became vested in him. Copyright is a thing known to the law as capable of acquisition and assignment in a particular way, and there is nothing to show here that Wesley Petty ever acquired anything at all. He acted simply as the agent of the incorporated Company" (*a*).

In both the cases above referred to it was held that a combination of two persons, neither of whom is entitled to sue, cannot constitute a person who is entitled to sue. It was put by Fry, L.J., in the first case, in this way: "I have no doubt whatever that a trustee in whom a copyright is vested may be registered as the owner, and may sue in that character; but it is impossible for one person to be the owner and another person to be on the register, and for those two persons successfully to sue." (*b*).

Original publisher must be registered.

There appears to have been an idea that the name of the first publisher who registers is sufficient, but it is not so. If the author A. sells his book and the copyright to B. who publishes it but does not register, and B. subsequently sells the copyright to C., another publisher, and the copyright is infringed during C.'s proprietorship, in order to entitle him to sue C. would have to make an entry in which he, C., would appear as proprietor and B. as publisher, although in fact B. had ceased to be the publisher. In *Coote* v. *Judd* (*c*) Vice-Chancellor Bacon said: "In my opinion the statute requires something more than registration of the name of the person who happens to be the publisher at the date of the registration: it requires that the name of the person who first published the book should appear, and this for the best of reasons, in order that everybody connected with the registration may ascertain for himself how far the right of a person claiming from or under the first publisher may be successfully challenged."

Sufficient to enter actual proprietor.

But in registering it is sufficient to enter the first publisher under the trade name of the firm, and the actual proprietor of the copyright at the time of registration (*d*), without stating who the first proprietor was, or how the copyright devolved upon the present proprietor.

So where an author registered his work in 1877, it having been published in 1854, by entering the name of the publishers and place of abode as "Newby and Co., Welbeck Street,

(*a*) (1897), 1 Ch. at p. 473.
(*b*) (1891), 3 Ch. at p. 303.
(*c*) (1883), 23 Ch. D. 727.
(*d*) See *The London Printing and Publishing Alliance, Limited, and Keep & Co.* v. *Cox* [1891] 3 Ch. 291; 7 T. L. R. 738.

Cavendish Square, London," and the name and place of abode of the proprietor of the copyright as Christopher Edward Weldon, and the date of the first publication as "July 16, 1854," and it was objected that the name of the original proprietor should have appeared, Vice-Chancellor Malins held the registration to be sufficient. He considered it clear that the "name and place of abode of the proprietor of the copyright," meant not the original proprietor, but the person who is the proprietor at the time the registration takes place. "What difference," said he, "can it make to anybody who the original proprietor was? It may be material to know who the original publisher is, the object being that a person registering may not pass off a fraudulent entry, but that he shall give the public an opportunity of inquiring of the publisher whether it was a genuine transaction, or whether the date has been fictitiously inserted, and therefore it is required that the name of the original publisher should be given, but it does not mean that the original proprietor, but that the present proprietor should be given" (*a*).

First date of publication must be stated.

L. and Sons registered a cricketing scoring-sheet, dating it 1851, and, dissolving partnership, again registered it in L.'s own name, dating it 1863. P. having published the same thing, L. threatened an action. P. continued to publish, and, on L. becoming bankrupt, purchased it of the assignees for £20. W., who had bid £10, purchased the sheet of P. for some time, but ultimately printed and published the left-hand half, containing the totals of runs, but not an analysis of bowling, which was on the right-hand half. On a bill filed to restrain the alleged infringement of the copyright, it was determined that the second registration was fatal, not showing the real first date of publication (*b*).

Correct title must be registered.

The correct title of the book must be entered on the register. In an action in the County Court for an injunction and damages for infringement of a trade catalogue, infringement was admitted, but the defendant alleged that the title of the catalogue was not duly registered. It appeared that on the outside cover of the catalogue were the names, occupations, and addresses of the defendants as manufacturers of shop fittings. On the first inside page the names, occupations, and addresses were repeated, but at the foot was added "Illustrated Catalogue and Price-List. Shop fittings of every description kept in stock or made

(*a*) *Weldon* v. *Dicks* (1878), 10 Ch. Div. 247; "Trial and Triumph."
(*b*) *Page* v. *Wisden* (1869). 20 L. T. 435; 17 W. R. 483; *Thomas* v. *Turner* (1886), 33 Ch. Div. 292.

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to order." There was nothing else in the nature of a title. The work contained illustrations and prices of shop fittings. It was registered under the title of "Illustrated book of shop fittings," in the names of the plaintiffs. The judge held that "the title" of the work was not properly registered under the Act, and this decision (reversing that of the Divisional Court) was confirmed by the Court of Appeal (*a*).

In the case referred to there was a title, and in a previous edition of the catalogue the same words occurred on the outside page, and also on the same part of the inside page, as the words in the catalogue in question, and those words had previously been registered as a title. Consequently the parties had actually admitted that there was a title, and it was incumbent upon them to register this accurately.

The Lord Chief Justice Coleridge considered that if the old-fashioned plan of having no short title, but a long description of the author and his work were revived a question might arise whether taking a part of that description and registering it as the title would not be sufficient. It is not likely that we should ever return to the practice of the early printers of the 15th century, who employed no title-page at all, but it was possible that books might yet be issued occasionally without a title-page, and even without what in early times answered to a certain extent its object, a colophon. If such a case should arise the probability was that a statement of the fact, together with a description of the book, would be sufficient for the purpose of registration. The Act required "the title" to be entered, but if there were none, it could not be entered; all that the case of *Harris and another* v. *Smart* decided was that if there were a title it must be correctly entered on the register.

As to the place of residence.

In *Lover* v. *Davidson* (*b*) the plaintiff, who was residing in New York at the time the entry was made, gave the address of his English publishers in the entry under the above provision, and Cresswell, J., was of opinion that Mr. Lover, the plaintiff, having at that time no other place of abode in England, had very properly described himself as of a place where he might be communicated with.

As to the abode of the assignee.

The provision with reference to the place of abode of the assignee would seem not to apply to the case of an assignee to whom the proprietorship has been assigned, not according to the statutory mode, but by an independent method. As soon

(*a*) *Harris and another* v. *Smart* (1889), 5 T. L. R. 594.
(*b*) (1856), 1 C. B. (N.S.) 182; *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627: 49 L. T. 339.

as the copyright is established in the original proprietor, there is nothing to prevent him from assigning by any other method, although the statute provides one more convenient and less expensive than the ordinary mode of assurance by deed. If the statute is resorted to, the terms of it must be complied with. Unfortunately, there is a discrepancy between the enactment in the 13th section, and the schedule No. 5, to which that section expressly refers. The section requires that there shall be an entry "of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule," but when we turn to the schedule there is no reference to the place of abode of the assignee.

Assignee must register.

In the case of *Liverpool General Brokers Association* v. *Commercial Press* (*a*), Mr. Justice Kennedy declined to follow a dictum of Cockburn, C.J., expressed in *Wood* v. *Boosey* (*b*) to the effect that an assignee of copyright could sue without being entered on the register, holding that such assignee is a "proprietor" and as such must be registered before he can sue under section 24.

Expunging or varying entry.

By the 14th section it is provided, That if any person shall deem himself aggrieved (*c*) by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the courts of law in term time, or to apply by summons to any judge of such courts in vacation, for an order that such entry may be expunged or varied; and that, upon any such application by motion or summons, the court or judge, as the case may be, shall make such order for expunging, varying, or confirming such entry, either with or without costs, and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order (*d*).

But the entry must be clearly shown to be false.

It seems that the court will not exercise its power under the above section to expunge any entry of proprietorship of

(*a*) (1897), 2 Q. B. 1; *Troitzsch* v. *Rees* (1887). 3 Times L. R. 773.
(*b*) (1867), L. R. 2 Q. B. 340. 351.
(*c*) *Graves' Case* (1869), L. R. 4 Q. B. 721–724, and the case of 'The Roll-Call,' *Publishers' Circular*, Feb. 16, 1876; *Ex parte Poulton & Son* (1884), 53 L. J. Q. B. 320; 32 W. R. 648.

(*d*) See *Ex parte Baxlow* (1854), 14 C. B. 631. Where the plaintiffs did not in their statement of claim expressly ask that the registration of the defendants as owners of the copyright might be expunged, it was held that an order to that effect could not be made at the trial, but that the plaintiffs must make a summary application for that purpose under the above section. *Hole* v. *Bradbury* (1879), 12 Ch. D. 886.

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copyright in the registry book, unless it be clearly and unequivocally shown that it is false; or vary it, unless satisfied by affidavit that in doing so it would make a true entry (*a*). To induce the court to interfere it must be satisfied that there is something unfair in the entry, by reason of the misconduct of the person who made it, or some right of the applicant which has been injuriously affected thereby.

Who has a right to have entry expunged.

It is not every one who disputes the plaintiff's title, who has a right to call upon the court to expunge the entry; for it would seem that there is no power to restore the entry, if once struck out; and that the Court ought not, therefore, to take such a step, unless it be clear that the plaintiff has no right to use the entry at the trial, and this is a point which ought to be settled, not on affidavits, but by an issue. And in one case (*b*), where an additional entry had been made at Stationers' Hall concerning the copyright of Auber's opera, 'Fra Diavolo,' subsequent to the commencement of disputes, and an application was made under section 14 to have the entries expunged, the court refused to expunge the entry, but ordered an issue to be tried to determine the question of copyright, on the trial of which the entry was (by consent) not to be used, and stayed proceedings in the action in the meantime.

In *Ex parte Davidson* (*c*) Cocks brought an action against Davidson for publishing three pieces of music alleged to be the copyright of Cocks. Before the action three entries had been made in the registry. These entries as they stood would afford *primâ facie* evidence of Cocks' copyright in the three pieces. Davidson obtained a rule nisi to expunge or vary these entries. It was obtained on an affidavit by which it appeared that Davidson claimed no copyright in the airs himself, but that his case was that they were old pieces, and that the persons who on the entries professed to be the authors were not really the authors; and the affidavits deposed to information and belief as to the facts, which, if true, proved the pieces

(*a*) *Ex parte Davidson* (1856), 18 C. B. 297; S. C. 25 L. J. (C.P.) 237; 2 Jur. (N.S.) 1024.

(*b*) "Persons aggrieved" in general are those whose title conflicts with that of the person registered: *Chappell* v. *Purday* (1845), 12 M. & W. 303. But in *Ex parte Poulton & Son* (1881), 53 L. J. Q. B. 320, 32 W. R. 684, the Court (Denman and Williams, J.J.) made an order varying the entry upon the application of the person who had caused the incorrect entry to be made. As to who is a party aggrieved under the 14th section, see further *Ex parte Davidson*, *supra*. But a person convicted of infringing the copyright in certain paintings and photographs of the registered proprietor, and who sets up no title in himself or adduces no evidence to rebut the *primâ facie* evidence of proprietorship afforded by the book of registry, is not a person "aggrieved" within the meaning of the above section; *Re Walker & Graves* (1869), 20 L. T. 877.

(*c*) (1853), 2 Ellis & B. 577.

were older than the supposed authors. The counsel for Cocks refused to consent not to use these entries on the trial. The court declined to expunge the entries, but made an order, without consent, that the rule should be enlarged till the trial of an issue to determine the question of copyright, in which Cocks should be plaintiff, and on the trial of which the entries should not be used; and that in the meantime proceedings in the action should be stayed. The court, however, has refused to follow this precedent, holding that its power is only to expunge or vary an entry and that it has no jurisdiction to deprive a plaintiff, without his consent, of the advantage given him by the statute of his entry in the register being *primâ facie* evidence of the copyright (*a*).

Appeal.

There is, probably, no appeal from an order of the court ordering an entry to be expunged, and, at any rate, there is no appeal from an order made by a vacation judge, sitting as a Divisional Court, to the Divisional Court (*b*).

No copyright acquired by registration before publication.

No copyright is acquired under 5 & 6 Vict. c. 45, by the registration of a book before its actual publication (*c*). The statute contemplates two things: first, that the person who makes the entry at Stationers' Hall shall be the proprietor of the copyright, and secondly, that the book to which the entry relates shall be a published book. Consequently, no man who is not the proprietor of the copyright in a published book, can make an entry with respect to it that will be of any avail (*d*). Until the thing is published and given to the world, it is not within the statute (*e*).

Registration of name of intended periodical will not give copyright.

And the mere registration of the name of a proposed periodical will not give copyright in that name or the right to use it as a trade-mark. In *Hogg* v. *Maxwell* (*f*), it was contended, that as by sections 2 and 13 of 5 & 6 Vict.

(*a*) *Ex parte Davidson* (1856), 18 C. B. 297.

(*b*) In the matter of 'The Young Duchess' (1891). 8 T. L. R. 41, see *Ex parte Davidson* (1856), 18 C. B. 297. *Chappell* v. *Purday* (1845), 12 M. & W. 303, as to appeal generally.

(*c*) "It is inconsistent with the whole scheme of the Copyright Act," said Vice-Chancellor Wood, "that you should be able to register a book not published; as the Act gives a right merely from the date of the first publication, and it must therefore be idle to register a book, as it were, in embryo." *Correspondent Newspaper Co.* v. *Saunders* (1865), 11 Jur. (N.S.) 510; 13 W. R. 804; 12 L. T. (N.S.) 510; *Maxwell* v. *Hogg*, *Hogg* v. *Maxwell* (1867), L. R. 2 Ch. 307; *Henderson* v. *Maxwell* (1877), 5 Ch. Div. 892; *Cassell* v. *Stiff* (1856), 2 Kay & J. 279; see also *Murray* v. *Bogue* (1852), 1 Drew. 353; *Talbot* v. *Judges* (1887), 3 T. L. R. 398.

(*d*) *The London Printing and Publishing Alliance (Limited)* v. *Horace Cox* [1891], 3 Ch. 291; 7 T. L. R. 738.

(*e*) *Henderson* v. *Maxwell* (2) (1877), 5 Ch. Div. 892.

(*f*) (1867), L. R. 2 Ch. Ap. 316; 36 L. J. (Ch.) 433; 16 L. T. (N.S.) 133; *Schove* v. *Schmincke* (1886), 33 Ch. Div. 546; 55 L. J. (Ch.) 892; 55 L. T. 212; 31 W. R. 700; *The Primrose Press Agency Co.* v. *Mark Knowles and others* (1886), 2 T. L. R. 404.

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c. 45, every "part" of a book may be registered, and a right to restrain the piracy of it thereby acquired, the registration of the title 'Belgravia' by the Messrs. Hogg in October 1863, three years before the publication of a magazine bearing that name, gave them a copyright in that title. To this Lord Cairns replied: "It is said that the word 'Belgravia' being used upon the title-page of the magazine, was part of a volume. But at the time of making the entry in the registry of Stationers' Hall there was no volume, no part of a volume, no sheet, no separate portion of a publication of any kind or description. There was nothing in existence except that very entry itself, and the entry of the name of a future publication. It is quite absurd to suppose that the legislature in providing for the registration of that which was to be the *indicium* of something outside the registry, in the shape of a volume, or part of a volume, meant that by the registration of one word, copyright in that one word could be obtained, even although that one word should be registered as what was to be the title of a book or of a magazine. . . . I apprehend that if it were necessary to decide the point it must be held that there cannot be what is termed copyright in a single word, although the word should be used as a fitting title for a book. The copyright contemplated by the Act must be not in a single word, but in some words in the shape of a volume, or part of a volume, which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work."

Attempt to secure title by dummy book.

An attempt to secure a title has been made by registering a dummy book to which the title of an intended book has been appropriated, and it is thought by this means to obtain an exclusive right to the title. This is probably a delusion. No case has ever gone beyond the principle that the proprietor of the particular title has a right to prevent any other person from adopting the same name for any other *similar production*. When the proprietor of the *Era* newspaper sought to restrain the use of this title with the addition of "New" by a rival publication, the Lords Justices reversed the decision of Vice-Chancellor Bacon, and held that there was no ground for granting an injunction. They considered that the real question was this, "Is what appears on the front of the paper calculated to deceive an ordinary purchaser into the belief that the article sold to him is other than what it seems, and what it seeks to imitate?" Unless fraud in a sense is proved, or at least a probability of a deception or imposition on the

public is established, a plaintiff could not well succeed. In an American case (*a*) the Court distinctly held that the title of a copyrighted publication was not capable of protection as copyright, *except in conjunction with the publication which it was used to designate*, and that the copyright in the paper in question, not having been infringed, that in the title had not been. In the case referred to, Mr. Justice Shepley puts the point in question very clearly. "It is only," said he, "as part of the book, and as the title to that particular literary composition that the title is embraced within the provisions of the Act. It may possibly be necessary in some cases in order to protect the copyrighted literary composition, for courts to secure the title from piracy, as well as other productions of the mind of the author in the book. The right secured by the Act, however, is the property in the literary composition, the product of the mind and genius of the author, and not in the name or title given to it. The title does not necessarily involve any literary composition; it may not be, and certainly the statute does not require that it should be, the product of the author's mind. It is not necessary that it should be novel or original. It is a mere appendage which only identifies and frequently does not in any way describe the literary composition itself or represent its character. By publishing, in accordance with the requirements of the copyright law, a book under the title of the life of any distinguished statesman, jurist, or author, the publisher could not prevent any other author from publishing an entirely different and original biography under the same title. When the title itself is original, and the product of the author's own mind, and is appropriated by the infringement, as well as the whole or a part of the literary composition itself, in protecting the other portions of the literary composition, Courts would probably also protect the title. But no case can be found either in England or this country, in which, under the law of copyright, Courts have protected the title alone separate from the book which it is *used to designate*" (*b*).

The entry requires the date of publication to be given, and the form in the schedule to the statute makes this clear, and this obviously cannot be given if the book be not already published.

In the case of any encyclopædia, review, magazine, periodical Registration necessary to

(*a*) *Osgood* v. *Allen*, 1 Holmes (Amer.) 185.

(*b*) See *Dicks* v. *Yates* (1881), 18 Ch. Div. 78; *Licensed Victuallers' Newspaper Co.* v. *Bingham* (1888), 38 Ch. Div. 139.

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protect articles in encyclopædias, reviews, magazines, and periodical works.

work, or other work published in a series of books or parts, the proprietor of the copyright must, under section 19, register (1) the title of the work, (2) the date of the publication of the first volume, number, or part, or of the first volume, number, or part published after the passing of the Act, (3) the name and place of abode of the proprietor, and (4) the name and place of abode of the publisher, when such publisher is not the proprietor.

Registration of first number of a periodical.

When the first volume, number, or part has been registered, all following numbers of the same work or series will be protected, without the necessity of any additional registration (*a*). As registration of the first number of a periodical applies to future issues, it extends to, and protects matter not published at the time of registration. But the copyright cannot vest in any number of the periodical until that number is published (*b*). A certified copy of the entry at Stationers' Hall will be *primâ facie* evidence of copyright in the proprietor, without his having to prove that the articles have been written on the terms that the copyright shall be in him, as provided by section 18 (*c*).

So also such registration will enable the proprietor to prevent the publication in a separate form of a serial published in successive numbers of the periodical, although neither the serial nor the first number containing it has been separately registered (*d*). Thus where the proprietor of a magazine called 'The Orb,' employed a person to write a serial called 'The Verger's Daughter,' for publication in successive numbers, upon the usual terms that the copyright should belong to, and be paid for, by the plaintiff; and after it had been published in 'The Orb' the defendant published for the author the same work under the title of 'Dangerous Connections'; it appearing that the first number of 'The Orb' had been duly registered under section 19, the Master of the Rolls granted an injunction, saying: "Here the proprietor of the copyright of a periodical seeks to restrain a separate publication of an article which is part of that periodical; but I am told that he cannot maintain the action until he has registered that article or the first number of the serial, and the date. That is out of the question.

(*a*) See *Walter* v. *Howe* (1881), 17 C. D. 708; *Bradbury* v. *Sharp*, W. N. (1891), 143; *The Trade Auxiliary Co. (Limited), Cate & Perry* v. *Middlesbrough and District Tradesmen's Protection Association (Limited)* (1889), 40 Ch. D. 425; 5 T. L. R. 168, 254; *Cate* v. *The Devon and Exeter Constitutional Newspaper Co. (Limited)* (1889), 5 T. L. R. 229; 40 Ch. D. 500; but the registration must be after and not before publication of the first number; *Henderson* v. *Maxwell* (1877), 5 Ch. Div. 892; *Reid* v. *Maxwell* (1886), 2 T. L. R. 790.

(*b*) *Chappell* v. *Purday* (1845), 12 M. & W. 303.

(*c*) *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 181.

(*d*) *Henderson* v. *Maxwell* (1876), 1 Ch. Div. 163.

A periodical is a book within the meaning of the Act, but the article or serial would be only part of the book, and it is unnecessary that it should be separately registered."

Author may register under Sect. 19.

It has been held that not only the proprietor of an encyclopædia or periodical work can register under section 19, but also an author who has first published in such encyclopædia or periodical and retained the copyright in himself. A. was the author of certain short stories which appeared from time to time in a newspaper called the 'Weekly Dispatch,' under the general heading of 'Birds of the Night.' The stories had separate names and had only a slight connection with each other. The copyright in the stories was retained by A. The 'Weekly Dispatch' was registered on the 13th April, 1892. The first of A.'s series of stories appeared in the issue published on the 8th September, 1893, and in the issue of 19th November, 1893, appeared the eleventh story of the series, which was entitled, 'XI.—The Cabman's Story.' This story was pirated by the defendants. A. had registered himself as proprietor of the copyright in the series 'Birds of the Night,' giving the 8th September, 1893, as the date of first publication; but he had not registered 'The Cabman's Story' separately. Mr. Justice Romer held that A. was entitled to register his stories as being "the proprietor of the copyright in . . . a work published in a series of books or parts"; that the date of first publication was correctly entered as 8th September, 1893, for that that was the date of the first number of the series; and that that registration covered all future stories in the series, which consequently did not need to be separately registered (*a*).

Registration of first number in this country and complete publication abroad first.

A question has been raised whether the publication of the first number of a story published in parts and duly registered in this country is sufficient to entitle the proprietor to copyright in parts of the same story first published abroad, in other words whether the rule that to entitle a foreign author to copyright in the United Kingdom, he must have published his work first in this country, applies conversely so as to disentitle a British subject to copyright in the United Kingdom if, owing to some act on his part, his work or some portion of it has been first published abroad.

The point was not actually decided but was incidentally treated by the Court of Appeal in *Reid* v. *Maxwell* (*b*), and all the Lords Justices inclined to think that a British subject was not thereby deprived of his copyright here.

(*a*) *Johnson* v. *Newnes* (1894), 3 Ch. 663. (*b*) (1886), 2 T. L. R. 790.

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A work had been written by Captain Mayne Reid in 1866 for Messrs. Ward, Lock and Tyler, entitled 'The Finger of Fate,' subject to a proviso that the copyright in the story should remain in Captain Reid. It consisted of 60 chapters and appeared in the 'Boy's Own Magazine' in 12 monthly parts during 1868, the first number being actually published on the 27th of December, 1867, and when completed it was issued, together with other matter, by Messrs. Ward, Lock and Tyler, under the name of the 'Beeton Boys' Annual for 1869.' In November 1867, Captain & Mrs. Reid went to America, and in June 1868,—that is before the completion of the English publication,—the story began to appear in an American publication called the 'Fireside Companion,' which came out weekly, so that the story was completed there earlier than it was in England—viz., in September instead of December 1868—the American publication having outstripped the English one in July, and all the chapters from chapter 37 onwards having just appeared in America. The American publisher was a Mr. G. Munro of New York, and it appeared that he purchased the right of publishing the story from Captain Mayne Reid early in 1868. The defendants had business relations with George Munro, and their case was that this constituted a first publication of the story in America, and that there was consequently no English copyright therein. The certificate of registration had been obtained by Mrs. Reid under the Act in her name as proprietor of the copyright. In maintaining an injunction which had been granted by the Vice-Chancellor, Lord Justice Cotton said that, as to the first objection that the registration in England was not sufficient to entitle Mrs. Reid to the copyright, he considered that the registration under the date of the 27th December, 1867, as the date of first publication was in strict accordance with section 19 of the Copyright Act, which provided that the proprietor of a work published in a series of parts should be entitled to all the benefits of registration on entering in the registry the title of the work so published, "and the time of the first publication of the first part thereof." The first publication of a work published in parts was the publication of the first part of it. Although, no doubt, a man might register a part only of a book, yet it was not necessary to register each part separately. If the entire parts were published as one whole, it was sufficient to register the publication of the first part as that of the whole. . . . It was urged that the story was not first published in England, because from chapter 37 it came out first in America, and that from

that point in any case the plaintiff had no right to the copyright. In his opinion the Court ought not at present to decide that point, because in any case the injunction was to a great extent right, for even if the defendants were entitled to publish the latter chapters of the story, they had been in fact publishing the whole. The contention was that the earlier publication in America would have prevented Captain Reid from acquiring copyright in England under the Copyright Act. The point was doubtful, but at present the inclination of his opinion was against that contention. It was doubtful, too, how far, in a case of a work published as this had been in the two countries contemporaneously, the fact of the foreign country getting a start and overtaking the publication here could be said to amount to a prior publication, but even if this were so, it did not follow that the copyright of the British subject had been lost thereby. The cases did not go to that extent. They only decided that, in order to entitle a foreigner to copyright in this country, he must have published his work first here. This was laid down by the cases of *Routledge* v. *Low* in the House of Lords (*a*), and by the remarks of Bayley, J., in *Clementi* v. *Walker* (*b*) where it was held that the Copyright Act extended to a foreigner only where he had added to the stock of learning in England by first publishing his work here; but no case had decided that an English author, who was clearly entitled as such to the benefit of the Act, should be deprived of his right on the ground that some one abroad has, by his authority, published some part of his work there before it was published here. The question was a serious one, and in his opinion one as to which it would not be right for him to express at present any definite decision, but he was not inclined to think that any portion of the copyright in the work had been lost through what had taken place in America.

Registration a condition precedent to the title to sue under 5 & 6 Vict. c. 45.

The law, as it existed previous to the 5 & 6 Vict., did not require registration as a condition precedent to the title to sue. The neglect to register did not affect the copyright (*c*), it merely prevented the recovery of the penalties imposed by the Acts in existence, until such entry had been made.

Subsequent to the Act, however, although the author has copyright in his work still unregistered (*d*), yet he cannot

(*a*) (1868), L. R. 3 H. L. 100. (*b*) (1824), 2 Barn. & Cress. 861; 26 R. R. 569.

(*c*) *Tonson* v. *Collins* (1761), 1 Wm. Bl. 330; *The University of Cambridge* v. *Bryer* (1812), 16 East, 317; *Beckford* v. *Hood* (1798), 7 T. R. 620. The case of *Blanchett* v. *Ingram* (1887), as reported in 3 T. L. R. 687, we do not pretend to understand, probably there were some facts not disclosed in the report.

(*d*) See *Chappell* v. *Davidson* (1855), 25 L. J. (C.P.) 225; 18 C. B. 191; *Weldon* v. *Dicks* (1878), L. R. 10 Ch. Div. 252.

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proceed for himself against infringement, unless he has duly registered in accordance with the Act (*a*). For, by the 24th section it is declared that no proprietor of copyright in any book which shall be first published after the passing of the Act shall maintain any action or suit at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company of such book, pursuant to the Act. Though the infringements have been made before registration, yet upon registration being effected an action can be maintained (*b*), and the issue of a writ in an action for infringement on the same day, but subsequently to the registration, sufficiently complies with the provisions of this 24th section so as to enable the person making the registration to sue (*c*). It is worthy of note, that a different system is adopted in regard to fine arts copyright, the Act of 1862 not permitting actions or proceedings to be taken in respect to anything done before the registration is effected under section 4. This appears a fairer principle (*d*). If the process of registration is to be considered as useful as an authentic notice of the copyright, it would seem that it ought in all conscience to be effected at a date prior to that on which the infringement of the right takes place in order to operate on it, for, otherwise, the infringer cannot reasonably be affected by notice, when such notice is subsequent to the commission of the act for which he is called upon to make amends, by the legal process issued out against him.

The prohibition imposed by section 24 on the proprietor of copyright from suing before registration, applies only to books, and the exceptions of the section in favour of the sole representation of a dramatic piece are extended to the performance of a musical composition (*e*).

(*a*) *Murray* v. *Bogue* (1852), 1 Drew. 353 ; 17 Jur. 219 ; 22 L. J. (Ch.) 457. This applies only to books first published after the Act ; it does not affect any book published prior thereto. (*b*) *Goubard* v. *Wallace*, W. N. (1877), 130.

(*c*) *Warne* v. *Laurence* (1886), 54 L. T. 371 ; 34 W. R. 452 ; W. N. (1886), 55 ; 2 T. L. R. 127.

(*d*) The Royal Commissioners in their report in 1878 on copyright recommended that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But as this provision they considered might in some cases operate harshly, they thought it should not apply if registration were effected within a limited time, say one month after publication. Par. 154.

(*e*) *Russell* v. *Smith* (1848), 12 Q. B. 217, 238. In other words, the proprietor of the "performing rights" in a dramatic piece may sue without registration. See *Marsh* v. *Conquest* (1861), 17 C. B. (N.S.) 418 ; *Edwards* v. *Vokes* (1903), 19 Times L. R. 31.

As to new matter—editions of works of compilation published since Copyright Act 1842, are books which must be registered, but the old matter may be sued upon, though the subsequent editions are not registered.

Where the first edition of a work of compilation was published before the 5 & 6 Vict. c. 45, and several editions were published after the Act but were not registered, it was held that, as to so much of the matter contained in the original as was contained in the subsequent editions, the proprietor of the copyright might sue, although such subsequent editions were not registered; but as to the new matter the subsequent editions were books which ought to have been registered, and the owner could not sue for infringement on that point (*a*).

Where the plaintiff in an action for infringement of copyright in a book, the first edition of which was published in November 1881, had not before commencing such action registered at Stationers' Hall either the first or a second edition which he had subsequently published, but he had registered a third edition which was in fact a reprint of the first edition, describing it in the entry as a third edition, and giving the time of the first publication as the 22nd of April, 1885, which was the date at which the third edition was published, the Court of Appeal, reversing the decision of Bacon, V.-C., held that the plaintiff had not truly stated the time of the first publication of his book within the meaning of section 13 of the Copyright Act, 1842, and consequently had not caused entry to be made of his book pursuant to the Act, and was precluded by section 24 from maintaining any action for infringement until he had made due and correct entry pursuant to section 13 (*b*).

In the case referred to, that of *Thomas* v. *Turner*, it was argued that, as by section 2 of the Act the word "book" included "every volume, part or division of a volume" . . . "separately published," therefore each edition was a book within the meaning of the Act, and might be registered with its time of publication under section 13. But to this Lord Justice Cotton replied, "The third edition which the plaintiff has entered as first published on the 22nd of April, 1885, is a mere reprint of a work first published in November 1881, and therefore although as a volume separately published it may come within the definition of the word 'book' contained in section 2, it is not a book in which there can be any copyright as distinguished from the original work, which is entitled to registration." The case was decided on the point that the edition in question was practically a reprint of the former

(*a*) *Murray* v. *Bogue* (1852), 1 Drew. 353; *Hutchins* v. *Sheard*, W. N. (1881) 20.
(*b*) *Thomas* v. *Turner* (1886), 33 Ch. Div. 292; 56 L. J. Ch. 56; 55 L. T. 531; 35 W. R. 177 (C.A.); 2 T. L. R. 724.

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editions, and in his judgment, Lord Justice Lindley says, "If the book entered had been partly old and partly new there might have been a compliance with the Act *pro tanto*, but the entry would not have given the plaintiff a copyright for a fresh period of forty-two years for the part which was old."

Where the date of the first publication of an illustrated catalogue, being a reprint with additions of catalogues duly registered in 1880 and 1882 was given on registration as the 22nd June, 1885, it was held that it was a correct statement as to the first publication of the new pages (*a*).

What constitutes an edition.

What constitutes an edition in these days it may sometimes be difficult to determine. According to *Reade* v. *Bentley* (*b*), an edition means "every quantity of books put forth to the book-selling trade and to the world at one time, and when the advertisements, the printing, and other well-known expenses and acts by a publisher bringing out such quantities in the ordinary way are closed, that constitutes the completion of the edition, whether the copies are taken from fixed or movable plates or types, or whether the types or plates are broken up or not, and whether all the copies taken are given forth and advertised for sale, or retained and stored in the warehouse of the publisher."

As to registration of maps.

A difficulty arises as to maps, charts, and plans by reason of the fact that they can sometimes be brought within the Engraving Acts, 8 Geo. II. c. 13, and 7 Geo. III. c. 38, which do not require registration. The latter of these Acts expressly includes a "map, chart, or plan," whilst the definition of "book" in the Literary Copyright Act also includes "a map, chart, or plan separately published." Must, then, a map, chart, or plan be registered under the Literary Copyright Act? (*c*)

The point arose in *Stannard* v. *Lee* (*d*), the object of the bill in which case was to restrain an alleged infringement by the defendant of the plaintiffs' copyright in a map or plan of the recent German-French War, which the plaintiffs by their bill described as 'No. 1 Stannard and Son's Panoramic Bird's-eye View of France and Prussia, and the surrounding countries likely to be involved in the war, with the railway and strategic positions of each army, and the great fortresses of the Rhine Provinces.' This map or plan was published by the plaintiffs, but it was never entered at Stationers' Hall. Subsequently to

(*a*) *Hayward Brothers* v. *Lely & Co.* (1887), 56 L. T. 418.
(*b*) (1858), 27 L. J. (Ch.) 254.
(*c*) The face of a barometer is not a chart. *Davis* v. *Committi* (1885), 54 L. J. Ch. 419.
(*d*) (1871), 24 L. T. 459.

the publication of their map the defendant published a similar work, which he entitled 'Thomas W. Lee's Panoramic Bird's-eye View of the Seat of War, from special drawings by French and German artists, showing the Rhine, France, Prussia, Belgium, and surrounding countries, rivers, roads, and railways, fortresses, and strategic positions of each army, &c.'

The bill charged that the publication of the defendant's map was contrary to the copyright statutes, and was an infringement of the plaintiff's copyright.

It was contended on behalf of the plaintiffs that the copyright in maps, charts, or plans was still governed by the 8 Geo. II. c. 13, and the 7 Geo. III. c. 38; that those Acts required no registration; and their operation was extended to prints taken by lithography or other mechanical process. An injunction having been granted, the case came before the Court of Appeal, when Lord Justice James, remarking that if this argument were to prevail, it would tend to one or other of two results; either that there would be two kinds of maps in respect of which there would be two distinct laws or copyright, or else that with regard to every map existing there would be now in this country two distinct and separate laws of copyright; one, a law giving a conditional right of property with an unconditional right of action or suit; the other, giving an unconditional right of property, with a conditional right of action or suit, said: "Such a result would be strangely inconvenient, and my Lord Coke has observed that the *argumentum ab inconvenienti* is always of great force, particularly where we are asked to construe an Act of Parliament, not according to its letter, but contrary to its letter, for the very purpose of producing these inconveniences, because the Act of Parliament which we have before us is in its letter very plain and very simple. It says that the word 'book' shall mean 'a map, chart, or plan separately published.' This is a map separately published. In another part of the Act, after expressly excepting from its operation anything affecting the right of property under this or any other Act of Parliament, it proceeds to say that 'no proprietor of copyright in any book' (that is to say, in any map, chart, or plan) 'which shall be first published after the passing of this Act, shall maintain any action or suit at law or in equity, or any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or other proceeding, have caused an entry to be made in the Book of Registry of the Stationers' Company of such book pursuant

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to this Act.' That is no very heavy duty to impose upon a man, and no very difficult step for him to take before commencing his proceedings. Those words are plain and simple; it seems to me that there is no ground for saying that they do not express the intention of the Legislature, and, in truth, when one considers it, the object of the Legislature seems very reasonable.

"And there would be, as I have pointed out, clearly great inconvenience in having two laws of copyright as to two sets of maps, or as to the same set of maps. There being really no inconvenience in giving the ordinary and natural meaning to the words themselves, I am of opinion that this plea is well pleaded, and that the plaintiff has not entitled himself to commence his suit. Of course it is open to him to register the map whenever he pleases. He might have registered it on the day before he filed his bill for this injunction."

And Lord Justice Mellish, in concurring in this view, said: "It is impossible to read the 2nd section of the 5 & 6 Vict. c. 45, without seeing that, for some purposes at any rate, maps are now to be considered as books, and are brought into the Acts relating to copyright as to books. Therefore, beyond all question, the 5 & 6 Vict. c. 45, has made an alteration in the law respecting maps, and therefore that Act must to some extent have affected the Acts of 8 Geo. II. c. 13, and 7 Geo. III. c. 38, although these two Acts of Parliament are not recited in the preamble of the present Act."

This decision is very apt to deceive. It was decided upon principles which will not probably be extended in future cases, and its precise scope may best be exemplified by a commentary thereon made by Vice-Chancellor Bacon in the subsequent case of *Stannard* v. *Harrison* (*a*): "Although in the case of *Stannard* v. *Lee* before the Lords Justices it was held that the design there was not protected for want of registration, that was because the plaintiff had alleged in his bill that he had invented a design and published 'a map,' and the defendant there pleads, relying on the large interpretation of the word 'book' in the last Act, that the statute prohibited the institution of any suit before registration had been performed. Both the Lords Justices were of that opinion, but the Lords Justices have said nothing in any part of their judgment about the other two statutes except this: The plaintiff's counsel, desiring to save himself by reference to the earlier statutes, they said, 'You cannot do that now you are here; the plea has been

(*a*) (1871), 24 L. T. 573.

filed to your bill, and the plea meets every thing that you allege in your bill; the plea must either be allowed or overruled.' The statutes were the thing relied upon. Every word of the Lord Justices' judgment proceeds upon that ground, and they never considered anything but that. The judgment of Mellish, L.J., puts that in the plainest light. He, as it were, congratulates them on having by a mere trick, or accident, the good fortune of placing a technical difficulty in the plaintiff's way, so as to get the plea allowed; but there is not a word about any meritorious elements in the case on the part of the defendant; there is not any doubt expressed that the plaintiff's claim in morals and in truth was a perfectly good and just claim. That this was so is seen in another part of the judgment, where the Lord Justice, answering Mr. Cotton, who desired to amend his bill so as to raise that question, as to its being an historical engraving, says: 'You ought to file a new bill; you have yourself put it into the category of maps.'" And in this case from which we have just quoted it was held that a bird's-eye view of a locality is a landscape within the meaning of the 7 Geo. III. c. 38, and as such does not require to be registered at Stationers' Hall pursuant to the provisions of the 5 & 6 Vict. c. 45, to entitle the designer to the protection afforded by the first Act.

Result.

The result would, therefore, appear to be that, generally speaking, maps, charts, and plans must be registered, but that what are sometimes popularly spoken of as maps, may be protected, without registration, on the ground that they are landscapes.

Copy of every book to be delivered to the British Museum.

A copy of every book (*a*), published since the 5 & 6 Vict. c. 45, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any subsequent edition, whether the first edition of such book shall have been published before or after the passing of the Act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which such book shall first be published within the bills of mortality, or within three months if the same shall first be published in any other part of the United Kingdom, or within twelve months after the same shall first be

(*a*) *Routledge* v. *Low* (1868), L. R. 3 H. L. 100; 37 L. J. (Ch.) 451.

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published in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum (*a*).

Copies for the use of university libraries.

Copies are likewise to be delivered for the benefit of the Bodleian Library at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and Trinity College, Dublin, on demand at the place of abode of the publishers thereof, at any time within a month after demand, during the period of twelve months from the publication thereof.

Distinction between a delivery to the British Museum and the other libraries.

According to these provisions, the main distinctions between a presentation to the British Museum, and a presentation to any of the other four libraries, are these: first, that the delivery to the Museum is to be made without demand on the part of that institution; whereas delivery to any of the other libraries need not be made at all, unless there be a written demand within twelve months after publication; and secondly, that the copy presented to the Museum must be one from the best copies of the work, while that for any of the other libraries need be only a copy from the set the most numerous. Thus, if a publisher produce a superior and an inferior edition at the same time (as in cases of quarto and octavo editions, so frequent in illustrated works), he must give a copy of the more valuable impression to the Museum; whereas he need only make presentations to the other libraries from the set of lesser cost, provided that set exceed the other by even a single copy (*b*).

Penalty for default.

The 10th section of the same statute enacts, that if the publisher of a book, or of a second or subsequent edition of a book, neglect to deliver a copy of it pursuant to this Act, he shall for every default forfeit, besides the value of the copy he ought to have delivered, a sum not exceeding £5, to be recovered by the librarian or other authorized officer of the library for whose use the copy should have been delivered; either summarily, on conviction before two magistrates for the county or place where the publisher making default resides, or by action of debt or similar proceeding at the suit of such librarian or other officer in any court of record in the United Kingdom, in which action, if the plaintiff obtain a verdict, he shall recover his costs reasonably incurred, or taxed as between attorney and client (*c*).

Delivery of copies to the

The first enactment extant, encouraging the establishment of libraries for the use of the learned bodies, is in the reign of

(*a*) The deposit is a condition of publishing, not a condition of copyright. In foreign countries deposit is only required when copyright is sought.
(*b*) Burke's Sup. to Godson's Pat. and Copy. p. 97.
(*c*) *Ibid. British Museum* v. *Payne* (1828), 4 Bing. 540 : 29 R. R. 617.

Charles II., when two copies of every work were ordered to be delivered by the publisher for the two English universities, and one copy for the king's library, 13 & 14 Car. II. c. 33, s. 17, continued by 16 Car. II. c. 18; 17 Car. II. c. 4; 1 Jac. II. c. 17, s. 15, &c., but expired in 1679. The clauses of the 17 Car. II. appear to be perpetual, as far as they relate to the three copies, although it seems it was not so considered, from their not being adverted to in the statute of Anne. The first foundation for the claim by any public library to a gratuitous delivery of new publications is in a deed of 1610, by which the Company of Stationers in London, at Sir Thomas Bodley's request, engaged to deliver a copy of every book printed by the company, and not before printed, to the University of Oxford. The next provision is to be found in the 8th Anne, c. 19, which extended the number of copies demandable to nine, viz., one for the royal library, two for the Universities of Oxford and Cambridge, four for the libraries of the four Scotch universities, the library of Sion College in London, and the library of the Faculty of Advocates in Edinburgh. This provision was afterwards enforced in 1775 (15 Geo. III. c. 53, s. 6), by an express enactment that no person should be subject to the penalties of those Acts for pirating books, unless the whole title to the copyright of the book was entered at Stationers' Hall, and the nine copies delivered there for the use of the libraries. Two additional copies were given to Trinity College and the society of King's Inn in Dublin by 41 Geo. III. The 54 Geo. III. c. 156, s. 1, repealed so much of the 8 Anne, c. 19, s. 5, and the 41 Geo. III. c. 107, s. 6, as required that any copy or copies of every book printed should be delivered to the warehouse-keeper of the Stationers' Company for the use of the libraries mentioned, or by him for their use, or which imposes any penalty on such printer or warehouse-keeper for not delivering the copies; and provided that eleven copies should be delivered for the use of the British Museum, Sion College, the Bodleian Library at Oxford, the Public Library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the libraries of the four Universities of Scotland, Trinity College Library, and that of the King's Inn at Dublin (*a*).

(*a*) In the United States, the law establishing the Smithsonian Institute (Act of Congress, August 1846, c. 178), directs, without any penalty, that a copy of every book, of which the copyright shall be secured, shall be sent to the library of that institution and one to the library of congress. Repealed by s. 6 of the Act of 1859, c. 22. In 1865, the owner was again required to transmit within one month after publication, a copy of every book to the library of congress; and in 1867 a penalty of twenty-five dollars was imposed for failure to make such delivery. See further the Acts of 1870 and 1891 in the Appendix.

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Suggestions of the Copyright Commissioners.

The Royal Commissioners in their report in 1878 on Copyright came to the conclusion, that so much of the existing law relative to gratuitous presentation of books to libraries, as requires copies of books to be given to libraries other than that of the British Museum, should be repealed. In making that recommendation they stated that they had taken into consideration the facts that the bodies to whom the libraries belong were possessed of considerable means, and were well able to purchase any books which they might require: and also that the repeal of the clause giving the privilege would not deprive the libraries of any property already acquired but merely of a right to obtain property hereinafter to be created.

They added that the importance of securing a national collection of every literary work had been recognised in most of the countries where there are copyright laws; and with a view to make the collection in this country more perfect, they were disposed to think that it would be desirable to require the deposit at the British Museum of a copy of every newspaper published in the United Kingdom.

On the general subject of registration the commissioners were of opinion that in order to provide an improved system of registration in substitution for that now in use, the two acts of registration and deposit of the copy of a book at or for the British Museum should be combined: or in other words, that, so far as the author is concerned, registration should be complete on the deposit of the copy and on obtaining an official receipt. One advantage of this would be a diminution of labour and expense, and the British Museum would probably receive all copyright books without the labour of hunting for them in booksellers' catalogues and advertisements, as the officials are obliged to do under the present system. Another advantage would be that the fees to be paid for registration might be materially diminished.

The principle of registration the commissioners intended to apply, with one exception, to dramatic pieces and musical compositions which are publicly performed but are not printed and published. Their suggestion that the acts of registration and deposit of a copy of a book should be combined manifestly could not conveniently be effected where the work had not been printed, therefore they proposed, in these cases, that it should be sufficient if the title of every drama or musical composition with the name of the author or composer and the date and place of its first public performance were registered.

CHAPTER V.

ASSIGNMENT OF COPYRIGHT.

Copyright personal property.

Copyright is personal property, and may be assigned. It must, however, be in existence to be assigned at law (*a*).

A local right.

It is after publication a local right only, embracing Great Britain and Ireland, the islands of Jersey and Guernsey, the British dominions in the East and West Indies, and the colonies, settlements, and possessions of the British Crown, acquired on or since the 1st day of January, 1842, or which hereafter may be acquired (*b*).

Its distinctive features.

It may be the subject of a bequest, and on the death of the person to whom it belongs will, failing any such bequest, devolve on his personal representatives (*c*). The printer of a newspaper (the 'Bath Chronicle,') bequeathed to his widow the benefit of his trade, subject to the trust of maintaining and educating her family. The foreman, by her assistance in giving him the use of the letter-press, &c., on the premises, set up a paper bearing the same name. An injunction was granted, at the request of the executors, to restrain him from carrying it on (*d*). As the copyright in a work is entirely distinct from the property in the stereotype plates from which it may have been printed, a sale of these does not carry the right to print and publish, unless the vendor is the owner of the copyright and such is the intention of the parties. So, if an execution against a stereotype founder were levied on plates which he had made for an author and not delivered, the title to these

(*a*) *Sweet* v. *Shaw* (1839), 8 L. J. Ch. 216; 3 Jur. 217; *Colburn* v. *Duncombe* (1838), 9 Sim. 151.

(*b*) 5 & 6 Vict. c. 45, s. 3; *Morang* v. *Publishers' Syndicate* (1900), 32 Ontario R. 393.

(*c*) See *Thompson* v. *Stanhope* (1774), Amb. 737; *Burnett* v. *Chetwood* (1720), 2 Mer. 441, n. As to the right of executors to publish, see *Dodsley* v. *M'Farquhar*, Mor. Dict. of Dec. 19 & 20 App. pt. 1, p. 1; and as to their right to receive the payment of the stipulated price of a portion of a work, although the author died before completing the other portion, see *Constable and Co.* v. *Robinson's Trustees*, 1 June 1808; Mor. Dict. of Dec. No. 5, App. Mut. Contract.

(*d*) *Keene* v. *Harris*, cited 17 Ves. 338, and see *Cruttwell* v. *Lye* (1810), 17 Ves. 335, 11 R. R. 98, and 8 Ves. 217.

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plates would be passed by the execution sale, and the purchaser might sell them, but clearly he could not print and publish the book for which they were made (*a*). Trustees in bankruptcy are not entitled to the manuscripts of an author (*b*), although the copyright of a book which has been printed and published will legally pass for the benefit of the creditors (*c*), and the price paid by the bookseller is as completely open to the diligence of creditors as the price of any other commodity or piece of merchandise. The reason assigned for this distinction is, that the author's right of withholding the publication continues till the very moment his book is actually given out to the public. Even the printer of the book would not be entitled to sell it for payment of the costs of printing, although there is not the smallest doubt that he has a complete lien over it, till delivery, to prevent the author or his creditors from taking advantage of the publication, till he shall have been paid (*d*).

The copyright passes on bankruptcy of author to his trustees without writing.

In *Macmen* v. *Tegg* (*e*), where it appeared that the author, who was one of the original owners and publishers of a work, had gone into bankruptcy, and his copyright had passed to assignees, from whom it was bought by the plaintiffs, Lord Eldon said: "Whatever question there may be in some cases, whether an interest in copyright does or does not pass without writing, it would, I apprehend, be difficult to maintain that there must be an instrument in writing between the bankrupt and his assignees."

Assignment of manuscript.

The property in an unpublished work is personalty, and is subject to the same general rules which govern personal property. Therefore it may pass by sale or delivery. Sales may be absolute or conditional, and they may be with or without qualifications, limitations, and restrictions; and the rules of law applicable in such cases to other personal property must be

(*a*) *Stevens* v. *Cady*, 14 How. (Amer.) 528; *Stevens* v. *Gladding*, 17 How. 447: *Carter* v. *Bailey*, 64 Me. (Amer.) 458.

(*b*) This statement has been questioned by Messrs. Cutler, Smith & Weatherley's 'Law of Musical and Dramatic Copyright,' and it is by them alleged that there is authority for the contrary proposition. With deference we submit that the statement in the text is accurate. The only authorities cited in favour of the contrary proposition are *Longman* v. *Tripp*—not a case of MSS. at all, but an authority to the effect that the right to publish a newspaper will pass to the trustees in bankruptcy—and the comprehensive vesting clause of the Bankruptcy Act of 1883 (46 & 47 Vict. c. 52, ss. 44 and 68).

(*c*) *Longman* v. *Tripp* (1805), 2 Bos. & Pull. New. 67: 9 R. R. 617; see 1 Burr. 2311; Amb. 695: *Stevens* v. *Cady*, 14 How. (Amer.) 528; *Stevens* v. *Gladding*, 17 How. (Amer.) 447; *Cooper* v. *Gunn*, 1 B. Mon. (Amer.) 594, 596: see *Atherley* v. *Vernon* (1721), 10 Mod. 518, 530.

(*d*) 1 Bell's Com. 68.

(*e*) (1826), 2 Russ. 392; 26 R. R. 126. *In re Curry*, the Irish Commissioner in Bankruptcy, expressed the opinion that copyright would pass to the bankrupt's assignee without a writing; (1818), 12 Ir. Eq. 391.

applied in determining the real character of a sale of literary property. Thus the right of first publication is vested in the author, but he may sell or assign the entire property to another; or may sell the manuscript on the condition that the same shall not be published, or be published only in a particular manner. An author who has not parted with the property in his production, or has not written it to the order of some other person, may secure the copyright to himself, and at any time afterwards may transfer it to an assignee; and when the author before publication transfers his unpublished production to another, then the assignee may register the Act as the "proprietor" (*a*).

The Act defines the word "assigns" to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law or otherwise (*b*). Statutory copyright cannot exist until after publication, therefore what passes under any assignment before publication, must be the common law property in the manuscript; *i.e.*, the right to publish with or without securing the copyright, and the right to withhold from publication.

It has been held that though statutory copyright must be in existence before it can be assigned in law (*c*); yet an agreement may be made to assign at a future time (*d*), in which case an equitable title may vest in the assignee (*e*).

An assignment not generally presumed.

A transfer of the right will not be presumed, unless the intention is manifest; such, for instance, as the acceptance of a receipt in writing for the price paid for the copyright (*f*); and evidence that the plaintiff, in an action for printing a musical work, acquiesced in the defendant's publication of it for six years, did not raise the presumption that the plaintiff had transferred his interest in the copyright. But where a copyright was not asserted for *fifteen years*, the Court of Chancery refused an injunction, until the right should be established at law; the Lord Chancellor saying: "I admit this to be the subject of copyright; but the plaintiff has

(*a*) *Lover* v. *Davidson* (1856), 1 C. B. (N.S.) 182: cf. *Sweet* v. *Cater* (1841), 11 Sim. 580.

(*b*) 5 & 6 Vict. c. 45, s. 2.

(*c*) *Colburn* v. *Duncombe* (1838), 9 Sim. 161; *Sweet* v. *Shaw* (1839), 3 Jur. 217; *Pulte* v. *Derby*, 5 McLean (Amer.) 328; *Lawrence* v. *Dana*, 2 Am. L. T. R. (N.S.) 102, 114.

(*d*) *Leader* v. *Purday* (1849), 7 C. B. 1; *Gould* v. *Banks*, 8 Wend. (N.Y.) 562.

(*e*) *Sims* v. *Marryat* (1851), 17 Q. B. 281; *Lawrence* v. *Dana*, *supra*.

(*f*) Otherwise held previous to 5 & 6 Vict. c. 45; see *Latour* v. *Bland* (1818), 2 Stark. 382.

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permitted several people to publish these dances, some of them for fifteen years; thus encouraging others to do so. That, it is true, is *not a justification*; but under these circumstances a court of equity will not interfere in the first instance. If, as is represented, some of them were published only last year, and one two months ago, the bill ought to have been confined to those. You may bring your action, and then apply for an injunction "(*a*). In a recent case (*b*) where the defendants had published for many years, without their sole title being disputed, and the plaintiff now contended that the copyright belonged to her, the Court presumed an assignment to the defendants.

As to whether assignment must be in writing.

Questions have arisen as to whether it is necessary to the validity of an assignment of copyright that it should be in writing. Much confusion has existed by reason of the mixing up of rights which are essentially different. The right of an author in his unpublished production is obviously of a different nature to that which he may secure in his published work under the Copyright Act. The Copyright Act does not affect the rights of an author in his composition before publication, and it does not follow that that which may, by the express words of the Act, or by its implied effect, relate to the assignment of copyright as secured by the Act would apply to the author's rights, which exist independent of the Act. The author's right in his unpublished work exists only by common law, and the mode of its transfer must be governed by the only law applicable—the common law—and a parol assignment would seem to be sufficient at common law. If the transfer be made before the vesting of the statutory copyright and is made in England and is good by the common law, or if made in a foreign country, is valid by the law of that land, the buyer becomes the owner of the property and is an assignee recognised by the statute.

This view has been partly recognised by the courts.

In *Cocks* v. *Purday* (*c*) it appeared that the plaintiff had bought from Hoffman, of Bohemia, the exclusive right of publishing in Great Britain a musical composition which at the time of purchase had not been published anywhere. Hoffmann had bought the composition from the author, Labitzky. No writing appears to have passed between these two persons; but by the Austrian law, which prevailed in Bohemia, a parol transfer of copyright was valid. The sale by Hoffmann to

(*a*) *Platt* v. *Button* (1815), 19 Ves. 447; Coop. Ch. Cas. 303.
(*b*) *Dennison* v. *Ashdown* (1897), 13 Times L. R. 226.
(*c*) (1846), 5 C. B. 860; see as to this case *post*; *Jeffreys* v. *Kyle*, 18 Sc. Sess. Cas., 2nd Ser. 906; 3 Macq. 611; *Hazlitt* v. *Templeman* (1866), 13 L. T. (N.S.) 593.

Cocks was made by letter, and no formal assignment was executed until nearly a year after the latter had published and registered the work in England. The defendant argued that the plaintiff's title was not good, because it had not been derived by a written assignment. The Court, after quoting the definition of assigns in sect. 2 of 5 & 6 Vict., c. 45, said: "There being then a sale in this case valid by the law of Austria, where it was made, the interest of the author became vested in the plaintiff before publication, so as to make him an assignee within the meaning of the third section; and he, therefore, had a good derivative title."

An assignment under the Statute of Anne.

An assignment of the copyright of a work, under the Statute of Anne, must have been in *writing*, and attested by two witnesses, in order to entitle the assignee to maintain an action for pirating it (*a*). True, this was not expressly demanded, but as the statute required that there should be two witnesses to a consent to a publication, it was naturally inferred that an assignment, which was of a higher nature than a mere consent, must have at least the same solemnity (*b*). The 41 Geo. III. c. 107, required the consent to be in writing, and to be signed in the presence of two or more credible witnesses. The 54 Geo. III. c. 156, reciting the former enactments, generally extended the copyright, and spoke of the consent in writing, but said nothing about the two witnesses. Opinions differed as to whether these later statutes abolished the necessity for the two witnesses to an assignment. Lord St. Leonards, in the case of *Jefferys* v. *Boosey* (*c*) expressed a strong opinion to the effect that these statutes had not altered the previous law in this respect; but in *Cumberland* v. *Copeland* (*d*), the Exchequer Chamber, overruling the judgment of the Court of Exchequer( ), held that so long as the assignment was in writing there was no longer any necessity for its attestation by two witnesses, on the ground that, after the passing of the 54 Geo. III. c. 156, sect. 4, in an action for

(*a*) *Power* v. *Walker* (1814), 4 Camp. 8; S. C. 3 M. & S. 7; *Morris* v. *Kelly* (1820), 1 Jac. & W. 481; 21 R. R. 216; *Clementi* v. *Walker* (1824), 2 B. & C. 861; *Davidson* v. *Bohn* (1848), 6 C. B. 156; 12 Jur. 922; 18 L. J. (C. P.) 11; *Leader* v. *Purday* (1849), 7 C. B. 4; *Jefferys* v. *Boosey* (1851), 4 H. L. C. 815; *Cumberland* v. *Copeland* (1862), 31 L. J. (Exch.) 19, 353.

(*b*) Lord Ellenborough, in *Power* v. *Walker*, *supra*; as to the distinction between a licence to publish and an assignment, see 27 L. J. (Ch.) 251, and the principle on which was decided the case of *Lacy* v. *Toole* (1867), 15 L. T. (N.S.) 512. The distinction between an assignment and a licence is that by the former the ownership of the copyright is vested in the assignee, while by the latter the licensee acquires the privilege of publishing, but no proprietary rights in the copyright.

(*c*) (1851), 4 H. L. C. 915; *Shepherd* v. *Conquest* (1856), 17 C. B. 427.

(*d*) (1862), 31 L. J. Exch. 353.

(*e*) (1861), 31 L. J. Exch. 19; 7 H. & N. 118.

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piracy, the consent in writing of the author became a good defence.

Assignment under the 5 & 6 Vict. c. 45 by entry in register.

Under the 5 & 6 Vict. c. 45, sect. 13, a proprietor of a copyright whose title has been registered in the register of the Stationers' Company may assign his interest or any portion of his interest therein, by making entry in the said register of such assignment, and of the name and place of abode of the assignee thereof, in the form given in the schedule of the Act, on payment of the sum of 5*s*. Such an assignment is effectual in law, to all intents and purposes whatsoever, without being subject to any stamp or duty, and has the same force as if such assignment had been made by deed. The statute makes a certified copy of the entry *prima facie* proof of assignment, "but subject to be rebutted by other evidence."

Assignment must be in writing, but need not be attested.

An assignment of copyright after publication since the passing of the 5 & 6 Vict. c. 45, must, unless made by entry at Stationers' Hall, be in writing, but need not be attested, and an assignment not in writing is not sufficient (*a*). So where a song was, in the year 1868, published by the defendant under a verbal agreement with the author, Suchet Champion, but no instrument of assignment of the copyright was executed by him to the defendant; and by an assignment in writing in 1874 Champion assigned to the plaintiff the entire copyright of the words and music of the said song in consideration of a royalty on each copy sold, which assignment the plaintiff made an entry of at Stationers' Hall, it was held that the title of the plaintiff must prevail, and that he could sustain an action to restrain the defendant from infringing his copyright (*b*).

It will depend upon circumstances how far a receipt for the purchase-money will operate as an assignment of the copyright (*c*).

(*a*) The proposition that an assignment in writing, since the 5 & 6 Vict. c. 45, need not be attested (4 H. L. C. 855, 881, 891, 931, 943), has been ably disputed in the 8th volume of the Jurist (N.S.) pt. ii. p. 148. And see *Power* v. *Walker* (1814), 3 M. & S. 8. Lord Ivory, in *Jeffreys* v. *Kyle*, 18 Ct. of Sess. 2nd Ser. p. 911; see 21 Ct. of Sess. 2nd Ser. p. 8, and others have thought that both *Power* v. *Walker* and *Davidson* v. *Bohn* were wrongly decided: see 3 H. L. C. 671, and *Cumberland* v. *Copeland*, on appeal, 31 L. J. (Ex. Ch.) 353. As to registration of an assignment see *ante* p. 121.

(*b*) *Leyland* v. *Stewart* (1876), 4 Ch. D. 419; so an assignment or licence of any design under the Designs Act, 1842, must be in writing: see *Jewitt* v. *Eckhardt* (1878), 8 Ch. Div. 404, and in the recent case of *Woolley* v. *Broad* (1892), 1 Q. B. 806, 9 R. P. C. 208, it was held that an exclusive licensee under a verbal agreement of a registered design was not entitled to sue. See *Stewart* v. *Casey* (1892), 9 R. P. C. 9 (a patent case).

(*c*) See *Howitt* v. *Hall* (1862), 6 L. T. 348; *Strahan* v. *Graham* (1867), 16 L. T. 87; *Colburn* v. *Duncombe* (1838), 9 Sim. 151; *Sims* v. *Marryat* (1857), 17 Q. B. 281; *Levi* v. *Rutley* (1871), L. R. 6 C. P. 523; *Cocks* v. *Purday* (1846), 5 C. B.

Assignment may be made by letter.

A sale made by letter may be a valid transfer. In *London Printing Alliance* v. *Cox*, K. and Co., art colour printers, who were owners of a picture called 'The Bride' and the copyright in it, entered into an agreement with the A. Company, the terms of which were embodied in a letter of the 19th of April, 1890, from K. and Co. "For 55,000 copies of 'The Bride' [style of reproduction described], price £13 9s. per 1000 copies, which price includes sole and entire copyright nett. 5000 copies not later than September 1890; balance, 50,000, not later than November 15, 1890. Picture and frame to become your property for an extra sum of £17, we to insure and take all risks of picture during time of progress of work. Terms of payment, bills at five, six, and seven months from date of delivery of goods." It was held by Fry and Lopes, L.J.J., that the title to the copyright passed immediately by this letter; by Lindley, L.J., that the letter only amounted to an agreement to sell the copyright, and not to an assignment of it (*a*).

Stamp on assignments not made by entry in register.

It may be well to mention that if the assignment is made not by registration at Stationers' Hall, but by assignment independently, an *ad valorem* duty will have to be paid. Thus, if the assignment were in the following terms:—"In consideration of the payment of £500, I hereby transfer to you the copyright and all other rights if any in a work written by me and entitled, 'The A B C of Copyright,'" this would amount to a conveyance on sale which by the 54th section of the Stamp Act 1891 (*b*), includes "every instrument whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser," and would be chargeable with *ad valorem* duty of £2 10*s*. And under s. 59 of the same Act (*c*), an agreement for the sale not amounting in terms to an actual assignment would require such a stamp. This section provides that "any contract or agreement made in England or Ireland under seal or under hand only or made in Scotland with or without any clause of registration . . . . for the sale of any estate or interest in any property except lands, tenements (and certain other specified species of property which do not include copyrights), shall be charged with the same *ad valorem* duties to be paid by the purchaser

860; see *The London Printing & Publishing Alliance (Limited) and Keep & Co.* v. *Horace Cox*, 7 T. L. R. 738; [1891] 3 Ch. 291.

(*a*) (1891), 3 Ch. 291; 7 T. L. R. 738; 60 L. J. Ch. 707; 65 L. T. 60; see *Lacy* v. *Toole* (1867), 15 L. T. 512: *Kyle* v. *Jeffreys*, 21 Scotch Sess. Cas. (N.S.) 8.

(*b*) 54 & 55 Vict. c. 39, which is a re-enactment of sec. 70 of the Stamp Act, 1870.

(*c*) Re-enactment of 52 & 53 Vict. c. 42, s. 15, sub-s. 1, which is repealed.

as if it were an actual conveyance on sale of the estate, interest, or property agreed or contracted to be sold." Consequently, since the passing of the Act of 1889 the same *ad valorem* duty will be charged on a contract for the sale of copyright or an interest therein, as also on a licence to publish in many cases, as on an actual assignment of copyright. It would be well, therefore, where it is desired to save the *ad valorem* duty, either to assign by entry in the Book of Registry of Stationers' Hall, or to agree to effect an assignment only by this method.

Questions have incidentally come before the Courts as to whether copyright is divisible (*a*). At present there are no express decisions on the point. It would seem, however, that it is in some instances divisible as to locality, and also as to time. *First*, as to locality. It is clear that it cannot be divided among independent owners so that each may have the exclusive right of sale for a distinct part of the same country, nor probably among different countries over which one copyright law extends. For instance, it is clear that the owner of an English copyright could not make an assignment to one person in Lancashire and to another person in Middlesex, and doubtful whether he could make an assignment of copyright to one person in Canada and another in India. But where a person can secure a copyright in two countries governed by two distinct copyright laws, there would seem to be no valid objection to his assigning his rights in one country to another, securing his rights in the other country to himself. For instance, suppose an author to be able to secure a copyright for himself both in France and in this country, he might make a valid assignment of his French copyright to one person, and his English to another (*b*). But this could not be regarded, strictly speaking, as a division of copyright, the rights being distinct—the one conferred by one country, the other by another.

Divisibility of copyright as to locality.

The question arose in *Jefferys* v. *Boosey*, where it appeared that Ricordi, the assignee of Bellini, being resident in Milan, assigned the copyright in 'La Sonnambula' to Boosey for publication in the United Kingdom only. Lord St. Leonards, in passing judgment, observed: The exercise of the right is confined in that assignment to the United Kingdom. Now, by the 41 Geo. III. c. 107, copyright is extended to any part of the British dominions in

(*a*) See question of joint and separate owners, *The Trade Auxiliary Co., Cate & Perry* v. *Middlesbrough and District Tradesmen's Protection Association* (1889), 5 T. L. R. 254; 40 Ch. D. 45; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500; *Lauri* v. *Renad* (1892), 3 Ch. 402.

(*b*) See *Pitt Pitts* v. *George* (1896), 2 Ch. 866.

Europe: and by the 54 Geo. III. c. 156, it was further extended to every other part of the British dominions. It is quite clear, therefore, that if, in this case, there was a copyright under the law of this country, it was a copyright which extended to every part of the British dominions; even considering the right in England, if I may so call it, as being capable of being secured from any foreign right, it would consequently be a partial assignment; and, as a partial assignment, I should venture to recommend your Lordships to decide that it was wholly void, and therefore gave no right at all.

"There is also, let me observe, this particularity: that as the assignment from Ricordi is confined to the United Kingdom, Ricordi himself might without any breach of his contract, have published this composition in any other part of the British dominions; he might, also by his Milanese right, have published it the very next day in Milan, without infringing on the right of Boosey under the assignment. The more, therefore, the question is considered, the more, I apprehend, will it appear clear that the assignment in question was void because it was limited to the United Kingdom, and did not extend to the whole of the British dominions." This also was the opinion of Lord Chief Baron Pollock and Baron Parke, but a majority of the Judges who advised the House of Lords were of opinion, that the owner might assign the exclusive right of publication in Great Britain, and reserve to himself the Austrian copyright (*a*).

Divisibility of copyright as to time.

Secondly, as to time. The proprietor of the copyright may assign his copyright for any period less than the period during which his copyright will continue. But in such case the question has been raised as to whether such limited transferee should be regarded as a limited assign or a licensee only, and, further, could the limited transferee register for a limited period. No provision is made by the Act, and it has been doubted whether an absolute assignment would not have to be made so far as the registry is concerned, and a re-assignment be made on the expiration of the period during which the limited assignment was made. But the practice has been for many years for the registrar to enter assignments for a certain number of years, or for certain numbers of copies, or for a certain number of editions, and this practice certainly seems to be justified by the Act. The 13th section of the

(*a*) (1854), 4 H. L. C. 815; see *D'Almaine* v. *Boosey* (1835), 1 Y. & C. Exch. 288; *Cocks* v. *Purday* (1846), 5 C. B. 860; *Low* v. *Ward* (1868), L. R. 6 Eq. 415; *Routledge* v. *Low* (1868), L. R. 3 H. L. 100; *Pitt Pitts* v. *George* (1896), 2 Ch. 866.

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Act of 1842, provides that it shall be lawful for the proprietor of the copyright in any book to make entry in the registry book of the title of such book, the time of first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the said book, or of any portion of such copyright; and that it shall be lawful for every such registered proprietor to assign his interest, or *any portion of his interest therein*, by making entry in the book of registry of such assignment, and of the name and place of abode of the assignee thereof. If the proprietor has a copyright extending over a period of forty-two years, surely an assignment for ten years would be an assignment of a portion of his interest in the copyright within the meaning of the above section.

The statute gives to the owner of a dramatic composition the exclusive right to print it, and the sole liberty of performing it. Either of these rights may be absolutely assigned independently of the other, and, in practice, the performing rights are constantly split up into London rights, touring rights, &c. (*a*).

Assignment by foreigner.

An assignment made by an assignee of a foreigner, though his title be good by the law of the country in which the assignment is made, and to which law both assignee and foreigner are subject, yet (being a foreigner), he has not, by the English law, an interest in the copyright such as he may assign to an Englishman for exclusive publication in England; nor would such an assignment hold good though made according to the law of this country.

This point was determined in *Jefferys* v. *Boosey*, to which we have already referred. Bellini, a foreigner, while living at Milan, composed a musical work, in which, by the laws there in force, he had a certain copyright. In February 1831, he there, by an instrument in writing, valid by the law of Milan, assigned the copyright to S. Ricordi, who afterwards came to this country, and in June 1831, by deed under his hand and seal, in the presence of, and attested by, two witnesses, assigned for a valuable consideration the copyright in the composition to Boosey, for publication in the United Kingdom only. Boosey then printed and published the work in this country, and Jefferys, without licence from Boosey, printed and

(*a*) See *Holt* v. *Woods* (1896), 17 N. S. W. R. 36, where it was held, in New South Wales, that the proprietor in Great Britain of the sole performing right could assign to another that right for the Australian colonies, and the assignee could sue in his own name in those colonies to restrain the infringement of his right.

published a portion of it in England. The case was carried eventually into the Upper House, and judgment given by Lords Cranworth, Brougham, and St. Leonards. The last-named learned judge was of opinion that copyright by the law of Milan could have no effect in this country; that the law of Milan, which gave to Bellini this copyright, could of course give him no right in this country. The first question was, how could a right exist in Bellini. as a foreigner, to copyright in this country? He had it by the law of Milan, because he was a native-born subject, or a subject, at all events, by residence, and the law of that country gave it to him; but the moment he stepped out of that country he could have no other right than was involved in the mere possession of the subject-matter in his hands, except so far as the law of any country to which he resorted might give him such a right. Then, in order to obtain copyright here, he must come and perform the conditions annexed to the enjoyment of that right; and he (Lord St. Leonards) held it to be perfectly clear that that condition is, that he must reside in this country. Then, if that were so, as Bellini did not perform the condition, he never had the right to assign, and he could not assign that which never existed. Remaining abroad, he could not have the right, for the common law of this country gave him no such right. Neither did the statute law of this country give him any such right. Therefore, whilst at Milan he had a Milanese copyright; but he had not, and could not acquire, a British copyright; and if he had no right in this country he could assign none. And in this view he was supported by the other learned judges (*a*).

Cocks v. *Purday* overruled.

This case completely overruled that of *Cocks* v. *Purday* (*b*). It had been held in that case that, where by the law of Austria (which prevailed where A., the author of a musical composition, and B., his assignee, were respectively domiciled) A. assigned his right to B., and B., before the publication of the work, sold his copyright to C., an Englishman, there being a sale valid by the law of Austria, the country in which the sale took place, the interest of the author became vested in C. before publication, so as to make him an assignee within the meaning of the 5 & 6 Vict. c. 45, s. 3, and to confer upon him a good derivative title.

The absence of an assignment in writing must be specially

(*a*) But see *ante* p. 91 *et seq.*

(*b*) (1846), 5 C. B. 860; 12 Jur. 677; 17 L. J. (C.P.) 273; and that of *Boosey* v. *Davidson* (1849), 13 Q. B. 257: 13 Jur. 678; 18 L. J. (Q.B.) 174; and *Boosey* v. *Jefferys* (1857) (in error), 6 Ex. 580; 15 Jur. 540; 20 L. J. (Ex.) 354; overruled by *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815; 24 L. J. (Ex.) 81; 1 Jur. (N.S.) 615.

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pleaded at law (*a*), but where one of the plaintiff's witnesses stated that he had heard the plaintiff declare, that he had parted with all his interest in the copyright, although he did not mention in what manner the transfer had been made, the plaintiff was immediately nonsuited (*b*).

Right of assignor to sell stock on hand after assignment.

It has been determined that, in the absence of a special contract to the contrary, the assignor of a copyright is entitled, after the assignment, to continue selling copies of the work printed by him before the assignment and remaining in his possession (*c*).

In *Howitt* v. *Hall* (*d*), it appeared that the defendants, having bought the copyright for four years in a book of which the plaintiff was the author, were still continuing, several years after the end of that term, to sell copies which they had printed during the four years. The court in refusing an injunction to restrain such sales, held that the purchase of the copyright carried the right of printing; and that, while this right reverted to the author at the end of four years, the publishers were entitled to sell, after the expiration of that term, all copies which had been printed in good faith during the term. "The Copyright Acts," said Vice-Chancellor Wood, "were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed" (*e*).

The two last cited cases must be taken as defining the law on the subject, but they are open to grave objections.

The Court of Chancery will disregard a permission from the author to infringe the copyright, given after he has parted with his equitable title for valuable consideration, and it has appeared upon the title-page of his work that it was printed for the equitable assignee of the copyright (*f*). And when an author has parted with his copyright in a work, he is not at liberty to reproduce substantially the same matter in another publication (*g*).

(*a*) *Barnett* v. *Glossop* (1835), 1 Bing. N. C. 633; but see *Johnson* v. *Dodgson* (1837), 2 M. & W. 657; and *Buttermere* v. *Hayes* (1839), 5 M. & W. 456; *De Pinna* v. *Polhill* (1837), 8 C. & P. 78: *Cocks* v. *Purday* (1846), 5 C. B. 860.

(*b*) *Moore* v. *Walker* (1814), 4 Camp. 9, n.

(*c*) *Taylor* v. *Pillow* (1869), Law Rep. 7 Eq. 418. See *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 48; 57 L. T. 110; 19 Q. B. D. 629; 56 L. J. (Q.B.) 553; 36 W. R. 93 (C.A.); S. C.: *Tuck & Sons* v. *The Continental Printing Co.* (1887), 3 T. L. R. 150, 661, 826; *Troitzsch* v. *Rees* (1887), 3 T. L. R. 773.

(*d*) (1862), 6 L. T. 318.

(*e*) But see *Pitt Pitts* v. *George* (1896), 2 Ch. 866.

(*f*) *Hodges* v. *Welsh* (1840), 2 Ir. Eq. Rep. 266.

(*g*) *Rooney* v. *Kelly*, 14 Ir. Law Rep. (N.S.) 158; *Colburn* v. *Simms* (1843), 2 Hare, 543.

Licence to publish.

A licence to publish must, by virtue of section 15 of the Copyright Act, 1842, be in writing, but need not be registered. Such a licence is not an assignment of the copyright (*a*); it does not prevent the licensor from suing for an infringement of his copyright by a stranger (*b*), but, semble, the licensee has no power to prevent such infringement. When the painter of a picture, after giving a licence to A. to publish it in monochrome, assigned the entire copyright to B., without notice of the licence, and then A., without notice of the assignment, published in monochrome, it was held that B. could sue A. for infringement (*c*). This decision seems, however, open to objection.

Assignment of share in copyright by entry at Stationers' Hall.

An assignment may be made of a share in the copyright, either a third or other proportion, and it is the practice at Stationers' Hall to enter such assignments in the register when tendered at the office.

(*a*) *Reade* v. *Bentley* (1857), 4 K. & J. 656; *London Printing Co.* v. *Cox* (1891), 3 Ch. 291: *Cooper* v. *Stephens* (1895), 1 Ch. 657; *Marshall* v. *Bull* (1901), 85 L. T. 77; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

(*b*) *Marshall* v. *Bull*, *supra*.

(*c*) *London Printing Co.* v. *Cox*, *supra*: *Heape* v. *Hartley* (1889), 42 Ch. D. 461.

CHAPTER VI.

INFRINGEMENT OF COPYRIGHT.

"O imitatores, servum pecus!"

"Quid nos dura refugimus
Ætas? quid intactum nefasti
Liquimus?"

HORACE.

Infringement of copyright.

THE question must obviously arise somewhat frequently, what is, and what is not, a piracy. In many cases the line of demarcation is so loosely and indifferently drawn, that arrival at a just conclusion is a matter of difficulty. So entirely must each case be governed and regulated by the particular circumstances attending it, that any general rules on the subject must be received with extreme caution. Regard must be had to the value of the work, and the value of the extent of the infringements; for while, on the one hand, the policy of the law allows a man to profit by all antecedent literature, yet on the other, the use made of such antecedent literature may not be so extensive as to injure the sale of the original work, even though made with no intention to invade the previous author's right (*a*); for the copyright having been violated, the penalty must be paid (*b*).

The result, in such cases, is the true test of the act. Full acknowledgment of the original, and the absence of any dishonest intention, will not excuse the appropriator when the effect of his appropriation is, of necessity, to injure and supersede the sale of the original work; for a man must be presumed to intend all that the publication of his work effects (*c*).

(*a*) *Roworth* v. *Wilkes* (1807), 1 Camp. 94; 10 R. R. 642; *Emerson* v. *Davies* (1845), 3 Story (Amer.) 768; *Campbell* v. *Scott* (1842), 11 Sim. 31; 11 L. J. Ch. 166; 6 Jur. 186; *Clement* v. *Maddick* (1859), 1 Giff. (Ch.) 98; 5 Jur. 592; *vide* Kindersley, V.-C., in *Murray* v *Bogue* (1852), 1 Drew. 353; Wood, V.-C., in *Reade* v. *Lacy* (1861), 1 J. & H. 524; and Story, J., in *Folsam* v. *Marsh*, 2 Story (Amer.) 115; see *Gambart* v. *Sumner* (1859), 5 H. & N. 5.

(*b*) *Millett* v. *Snowdon*, 1 West. L. J. (Amer.) 240; *Parker* v. *Hulme*, 7 *ibid.* 426; *Webb* v. *Powers*, 2 Wood & M. (Amer.) 497.

(*c*) Wood, V.-C., in *Scott* v. *Stanford* (1867), Law Rep. 3 Eq. 723; *Clement* v. *Maddick* (1859), 1 Giff. 98; *Millett* v. *Snowden* 1 West. L. J. (Amer.) 240; *Nichols*

Animus furandi.

In some of the cases it will be observed that stress is laid on the existence of the *animus furandi* (*a*). But the question of piracy cannot properly depend upon the intention of the pirate. The main point must always be what effect will the extracts have upon the original work—how far will they supply its place or injure its sale. If the extracts are such as to render the protected work less valuable, by superseding its use in any degree, the right of the author is infringed, and it can be of no importance to inquire with what intent this was done.

Plagiarism not necessarily an invasion of copyright.

Plagiarism does not necessarily amount to an invasion of copyright, and the author of a published book has no monopoly in the theories and speculations, or even in the results of observations therein contained; but no one, whether with or without acknowledgment, can be permitted to take a material and substantial portion of the published work of another author, for the purpose of making or improving a rival publication (*b*).

Sporting selections.

There can be no copyright in an opinion. In a recent case, the plaintiff who was the publisher of a registered weekly periodical, inserted each week, under the title of 'One Horse Selections,' a list of horses which he expected to win at races in the ensuing week. The defendants published each day at race-meetings a sheet or card giving, under the title, 'The Specials, One Horse Finals,' a list of horses which the plaintiff and other sporting authorities had selected as likely to win in races on that particular day, with the names of those who had selected them. It was held that the defendants had not infringed the copyright in the plaintiff's periodical (*c*).

Want of originality in modern works.

La Bruyère declares that we are come into the world too late to produce anything new, that nature and life are pre-occupied, and that description and sentiment have been long exhausted. However this may be, it is apparent that some similarities, and a use, to a certain extent, of prior works, even to the copying of small parts, must be tolerated in the case of

v. *Ruggles*, 3 Day (*ibid.*) 158; *Story* v. *Holcombe*, 4 McLean (*ibid.*) 306; McLean, J., Ohio, 1847.

(*a*) *Cary* v. *Kearsley* (1802), 4 Esp. 170; 6 R. R. 846; *Lewis* v. *Fullarton* (1839), 2 Beav. 6; *Moffatt & Paige* v. *Gill & Sons* (1901), 84 L. T. 452; reversed (1902), 86 L. T. 465. The *animus furandi* will be taken into consideration in those cases where it is difficult to ascertain the extent of the copying, in order to determine whether the use made of a protected work by a subsequent author is fair or lawful; *Spiers* v. *Brown* (1858), 6 W. R. 352.

(*b*) *Pike* v. *Nicholas* (1869), 38 L. J. (Ch.) 529; 20 L. T. (N.S.) 906; reversed (1870), L. R. 5 Ch. 251; 18 W. R. 321; 39 L. J. (Ch.) 435, but not in opposition to the principle above laid down.

(*c*) *Chilton* v. *Progress Printing Co.* (1895), 2 Ch. 29.

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such works as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, concordances, encyclopædias, itineraries, guide books, and similar productions, if the main design and execution are in reality novel and improved, and not a mere cover for important piracies (*a*).

The latter, to be a piracy, need not serve as a substitute for the former work.

To be a piracy it is not necessary that the latter work should be a substitute for the original composition. This can seldom be criterion. Vice-Chancellor Shadwell on one occasion, put the case in a simple aspect: "We all know that there has been a very valuable Greek lexicon published by Mr. Liddell and another friend of his at Oxford; no person who published this lexicon omitting three or four words at the end of each letter of the alphabet, could have done a work of which it could be said, that it might be taken as a substitute, for nobody would take it as a substitute. But can it be doubted that it might have a very material effect in diminishing the price of the first book? For, though nobody would take it as a substitute, many people might not care about so much, and might take it cheaply for what it really did contain, which might be more than ninety-nine hundredths of the whole, and yet it would in no manner be a substitute; and, therefore, the language is not generally correct, so as to be capable of application to every case."

Where a work entitled 'A Practical Treatise on the Law Relative to the Sale and Conveyance of Real Property, &c.,' contained piratical extracts from an earlier standard work, which was entitled 'A Practical Treatise on the Law of Vendors and Purchasers of Estates,' the Vice-Chancellor Shadwell observed: "In cases of this nature, if the pirated matter is not considerable, that is, where the passages, which are neither numerous nor long, have been taken from different parts of the original work, this court would not interfere to restrain the publication of the work complained of, but will leave the plaintiff to seek his remedy at law. But in this case it is plain that the passages which have been pointed out have been taken from the plaintiff's book, and they are so considerable, both in number and length, as to make it right that this court should interfere" (*b*).

Principles by which a *piracy* is judged.

The inquiry in most cases, is not, whether the defendant has used the thoughts, conceptions, information, and discoveries promulgated by the original, but whether his composition may be considered a *new work*, requiring invention, learning, and

(*a*) *Webb* v. *Powers*, 2 Wood & M. (Amer.) 497–512; *vide* 2 Hilliards on Torts, 49.

(*b*) *Sweet* v. *Cater* (1841), 11 Sim. 580. See *Kelly* v. *Hooper* (1840), 4 Jur. (O.S.) 21.

judgment, or only a mere transcript of the whole or parts of the original, with mere colourable variations (*a*).

Modes in which copyright may be infringed.

Copyright may be invaded in several ways :—

1st. By reprinting the whole work *verbatim*.

2nd. By reprinting *verbatim* a part of it.

3rd. By imitating the whole or a part, or by reproducing the whole or a part with colourable alterations.

4th. By reproducing the whole or a part under an abridged form.

5th. By reproducing the whole or a part under the form of a translation.

1. By reprinting the whole *verbatim*.

Piracies of the nature of the first division are seldom committed, on account of the ease with which they could be detected and punished.

When such cases do arise generally either the defendant has mistaken his rights or the infringement has been imported from abroad (*b*).

It must be remembered that, according to section 2 of the Copyright Act, copyright is "the sole and exclusive liberty of printing or otherwise multiplying copies" of a work, and to constitute a piracy there must be an invasion of this liberty. To *make use* of a book is not a piracy, if the copies are not multiplied. To take a familiar instance, it is the custom for many Law Societies to print special conditions relating to the sale of real estate. A. and B. enter into a contract for sale and incorporate by reference into their agreement "the Conditions of Sale of the X.Y. Law Society." Assuming that these conditions are the subject of copyright, A. and B. are not infringing that copyright if they confine themselves to a reference and do not copy the special conditions into their agreement.

2. By reprinting *verbatim* a part.

Piracies of the nature of the second division are far more frequent and more difficult of detection. The quantity of matter subtracted cannot in all cases be a true criterion of the extent of the piracy, for a work may be a piracy upon another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical work a substitution for the original work.

In questions as to the extent of appropriation which is necessary to establish an infringement, extreme difficulty is usually experienced, for the quality of the piracy is frequently

(*a*) *Stowe* v. *Thomas*, 9 Wall. C. Ct. (Amer.) 547 ; S.C. 2 Amer. L. Reg. 231.

(*b*) This was done in the case of a book imported from America, 'Clarke's House of Lords Cases,' vol. viii. ; see *Butterworth* v. *Kelly* (1888), 4 T. L. R. 430.

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more important than the proportion which the borrowed passages might bear to the whole work (*a*).

If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient, in point of law, to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author; and it is no defence that another person has appropriated a part and not the whole of such property.

Usual defences.

There are two usual defences in this class of case:—(a) that the defendant has not exceeded the limit of "fair quotation"; and (b) that what the defendant is alleged to have taken is from a source open to all the world.

(*a*) Fair quotation—quantity but slight test.

Whether the limits of fair quotation have been exceeded or not can seldom be determined simply by looking to the quantity taken.

Lord Cottenham, in the cases of *Bramwell* v. *Halcomb* (*b*), and *Saunders* v. *Smith* (*c*), adverting to this point, said: "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, that is always looked to. It is useless to refer to any particular cases as to quantity." In short, we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects of the original work. Many mixed ingredients enter into the discussion of such questions. In some cases a considerable portion of the materials of the original work may be fused into another work, so as to be indistinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy. If a person should, under colour of publishing 'elegant extracts' of poetry, include all the best pieces at large of a favourite poet, whose volume was secured by copyright, it would be difficult to say why it was not an invasion of that right, since it might

(*a*) Vice-Chancellor in *Tinsley* v. *Lacy* (1861), 1 H. & M. 747; 32 L. J. (Ch.) 535: *Warne* v. *Seebohm* (1888), 39 Ch. D. 73: and see *Trade Auxiliary Co.* v. *Middlesbrough and District, &c., Association* (1889), 40 Ch. D. 425: *Cate* v. *Devon Constitutional Newspaper Co.*, *Ib.* 500.

(*b*) (1836), 3 My. & Cr. 737.

(*c*) (1838), 3 My. & Cr. 711.

constitute the entire value of the volume. The case of *Maxman* v. *Tegg* (*a*) is to this purpose. There was no pretence in that case that all the articles of the encyclopædia of the plaintiffs had been copied into that of the defendants; but large portions of the materials of the plaintiff's work had been copied. Lord Eldon, upon that occasion, held that there might be a piracy of a part of a work, which would entitle the plaintiffs to a full remedy and relief in equity. In prior cases he had affirmed the like doctrine. In *Wilkins* v. *Aikin* (*b*), he said, 'There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or a part of another's book, although he may use, what in all cases it is difficult to define, fair quotation."

Fair quotation—character of works to be regarded. 'The Man of his Time.'

The character of the books may be looked at; for an author will be allowed greater freedom of quotation if he is writing a book of an entirely different character from that from which he quotes, than if the books directly compete with one another. This is well illustrated by the case of *Bradbury* v. *Hotten* (*c*), one which is very near the line. There the publication complained of was 'The Man of his Time,' the object of which was to illustrate the career of Napoleon III. by caricatures taken from leading English and foreign illustrated papers. Nine caricatures, with their original headings and references, but much reduced in size, were copied from nine numbers of 'Punch,' comprised within the period extending from 1849 to 1867. It was declared that the selections had been taken for the sole purpose of illustrating the career of Napoleon. While admitting that limited extracts might be taken from copyright works for a fair purpose of this kind, the court found that the defendant had republished the caricatures in 'Punch' for the same purpose as they were originally published, namely, to excite the amusement of his readers. It was held that the defendant had gone beyond the privilege of fair quotation, and therefore a case of piracy was made out.

In the course of his judgment in this case, Kelly, C.B., gave the following illustrations:—"A traveller publishes a book of travels about some distant country like China. Amongst other things, he describes some mode of preparing food in use there. Then the compiler of a cookery book re-publishes the description. No one could say that that was piracy. So again, an author publishes a history illustrated with woodcuts of the

(*a*) (1826), 2 Russ. 385; 26 R. R. 112. (*b*) (1810), 17 Ves. 422.
(*c*) (1872), L. R. 8 Exch. 1; but see *Leslie* v. *Young* (1894), A.C. 335.

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heads of kings, and another person, writing another history of some other country, finds occasion to copy one of these woodcuts. That, again, would not be a piracy. Yet, on the other hand, the copying of a single picture may, under some circumstances, be an infringement. For example, take the case of a work illustrated by one engraving of the likeness of some distinguished man, where no other likeness is extant. No one could have a right to copy that into a book upon any subject whatever, and a jury would in such a case rightly find that there had been an infringement of the copyright."

'Thackerayana, Notes and Anecdotes.' For Biography.

A similar case to the last cited was that concerning the book entitled 'Thackerayana, Notes and Anecdotes, illustrated by nearly Six Hundred Sketches, by William Makepeace Thackeray.' It purported to be a kind of biography of Thackeray, based on the assumption that his own experiences were narrated in certain of his novels. Besides some previously unpublished sketches and caricatures by Thackeray, the work contained extensive selections from his published works, the copyright of which belonged to the plaintiff. The extracts were prepared by, and interspersed with original comments by the compiler. The court found that the effect of the book was to supersede to a damaging extent the works from which the selections had been made, and accordingly held it to be a case of piracy (*a*).

Reports of public speeches.

In *Walter* v. *Lane* (*b*) it was decided that a reporter may acquire copyright in his report of a speech delivered on a public occasion. The speeches in question were delivered by Lord Rosebery, and the defendant published a book called 'Appreciations and Addresses: Lord Rosebery,' in which was contained four entire speeches of Lord Rosebery, taken *verbatim* from the 'Times.' An injunction was granted restraining this copying, but, in accordance with the principles laid down by Kelly, C.B., in the above-cited case of *Bradbury* v. *Hotten*, it is considered that in such a case the courts would give a liberal interpretation to the meaning of "fair quotation"; for, obviously, the speech was public property, though the report belonged to the 'Times.'

Telegraph codes.

Where the plaintiff published 'The Standard Telegram Code,' a book containing 100,000 words selected from eight languages, which words he considered specially adapted for correct telegraphic transmission, and the defendants printed a book containing some 70,000 of the words comprised in his

(*a*) *Smith* v. *Chatto* (1874), 31 L. T. (N.S.) 775.
(*b*) (1900), A.C. 539; 69 L. J. Ch. 699; 83 L. T. 289; 49 W. R. 95.

book with the addition of interpretations suited for the purposes of the timber trade, which book they called 'Shadbolt's Telegraph Code,' an injunction was granted. The defendants maintained that having purchased one of the plaintiff's books, they were perfectly justified in selecting, as they had done, words from it, and in attributing to these and to other words chosen by themselves meanings in ordinary language suitable for the purpose of their trade, and in having the book so formed printed and used by themselves and their correspondents, and they insisted that this was a legitimate use of the plaintiff's book—that they had used it for the purpose for which it was compiled, *i.e.*, by their own ingenuity and with original matter of their own had turned it into a private code for the purposes of their business and correspondents. Mr. Justice Kay, however, pointed out that if what the defendants had done was lawful, a person might buy one of the plaintiff's books, reprint every word of it, putting opposite to each of them his own interpretation or phrase, and then sell the work at a third or a tenth of the cost of the plaintiff's book, and so render it unnecessary for any one to buy the plaintiff's book, and in fact prevent the sale of a single further copy (*a*).

Extracts for criticism.

Many cases of extracts for criticism have come before the court. It is obvious that quotations to some extent must in such cases be made from the work reviewed, and this abstract right of the reviewer has never been impeached. To deny this privilege would be, as Lord Kinloch once said, "to sentence to death all our reviews, and the greater part of our works in philosophy." The reviewer may make extracts sufficient to show the merits or demerits of the work, but not to such an extent as that the review may serve as a substitute for the book reviewed. Sufficient may be taken to give a correct view of the whole, but the privilege of making extracts is limited to those objects, and no person will be allowed to republish in the form of quotations a valuable part of the protected work and thus to an injurious extent to supersede the original (*b*).

Whether the limits of lawful quotation have been exceeded

(*a*) *Ager* v. *Collingridge* (1886), 2 T. L. R. 291, following *Ager* v. *P. & O. Steam Navigation Co.* (1884), 26 Ch. D. 637; cf. *Pitman* v. *Hine* (1884), 1 T. L. R. 39, a case of shorthand outlines: *Smith* v. *Cater* (1841), 11 Sim. 580; *Kelly* v. *Hooper* (1840), 4 Jur. (O.S.) 21.

(*b*) *Roucarth* v. *Wilkes* (1807), 1 Camp. 94; 10 R. R. 642; *Mawman* v. *Tegg* (1826), 2 Russ. 385; *Campbell* v. *Scott* (1842), 11 Sim. 31; *Bohn* v. *Bogue* (1847), 10 Jur. 120; *Black* v. *Murray*, 9 Sc. Sess. Cas. 3rd ser. 311; *Smith* v. *Chatto*, *supra*; *Lawrence* v. *Dana*, 2 Am. L. T. R. (N.S.) 402.

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is a question to be governed by the particular circumstances of each case.

Reviews or criticisms.

In a case in which the work alleged to be pirated was a play extending over forty pages, and the defendant had published a journal of theatrical criticism in which, as illustrative of his critical remarks, he had introduced broken and detached fragments of the piece in question, amounting in the whole to six or seven pages, some weight appears to have been allowed by the court to the fact of the extent of the extracts being so inconsiderable, as affording ground for doubt whether the defendant had transgressed the limits of fair quotation (*a*).

The Great Western Railway inquiry.

In *Bell* v. *Whitehead* (*b*) the plaintiffs had published in the 'Monthly Chronicle' an article entitled 'The Great Western Railway Inquiry,' occupying nineteen pages; the defendant had extracted four pages and a half from this, and published it in the 'Railway Times,' a weekly paper, with animadversions. A controversy was, at that time, going on as to the principles upon which a railway should be constructed, on the one side being Mr. Brunel, and on the other Dr. Lardner. The 'Railway Times' took the side contrary to Dr. Lardner, and the article taken from the 'Monthly Chronicle' was in favour of Dr. Lardner's views, and the defendant's object in taking it was to criticise it. Under these circumstances Lord Cottenham, C., dissolved an injunction which had been obtained.

Copying short stories for review.

But where, in a more recent case (*c*) the publisher, Mr. Maxwell, applied for an injunction against the proprietor of the 'Bristol Mercury' to restrain him from publishing two stories, 'A Troubled Life,' and 'How I Lost the County,' which he had taken *verbatim* from 'Belgravia' and the 'Belgravian Annual'; and it appeared that the magazines were sent to the defendants for review, and that it was the custom, and had been so for many years, to extract short stories in the way defendants had done, Vice-Chancellor Bacon decided that the defendants had no right to publish articles from publications sent to them for criticism; but in granting the injunction asked, made no order as to costs, being of opinion that the defendants had acted unwittingly in making use of the articles in question.

(*a*) *Whittingham* v. *Wooler* (1817). 2 Swans. 428. In *Cobbett* v. *Woodward* (1874), L. R. 14 Eq. 407, the Court was willing to grant an injunction against about eight lines copied from the plaintiff's publication. In *Sweet* v. *Benning* (1855), 16 C. B. 459, copied matter forming about one-twentieth part of defendant's work was held to amount to piracy. See *Bradbury* v. *Hotten* (1872), L. R. 8 Exch. 1; *Chatterton* v. *Cave* (1878), 3 App. Cas. 483; *Gray* v. *Russell*, 1 Story (Amer.) 20; *Tinsley* v. *Lacy* (1861), 1 H. & M. 752; *Ward Lock & Co.* v. *Scott*, W. N. (1886) 190.

(*b*) (1839), 8 L. J. Ch. 141; 3 Jur. 68.

(*c*) *Maxwell* v. *Somerton* (1874), 30 L. T. 11; 22 W. R. 313.

Copying articles in current magazines into country newspapers.

It has become a custom for many country papers to copy or abridge articles appearing in current magazines. The proprietors of these country papers seem to be under the impression that because the magazine is sent to them for review they are justified in the use they make of the articles in question. There can be no doubt that the reproduction of articles or portions of articles in this way may materially advance their popularity and increase the circulation of the magazine, so that to some extent editors should not be restricted in their custom, but it must be remembered that what helps the circulation of the magazine from which the article is taken does not necessarily increase the circulation of the article itself. For instance, assume a short story of great interest appears in one number of a magazine, the reproduction of this story in a newspaper, though it might assist the circulation of the magazine from which it is taken, generally might seriously interfere with the value of the copyright in the particular story. The reason why probably the custom above referred to has been permitted to have sway is the absurd terms of the Copyright Act, giving the proprietor of the magazine a copyright for 28 years, without the right of republishing in a separate form without the consent of the author, and revesting the right to publish in the author after a period of 28 years, when the probability is that this right is valueless. As the law stands authors should reserve to themselves the right of separate publication as authorised by the 18th section of the Act. The recent Copyright Bill of 1900 proposed to meet the difficulty by substituting the period of two years for 28 years, after which the copyright in magazine articles was to revert to the author. This period of two years would be ample, inasmuch as all fear of competition between the article as separately reprinted and as appearing in the magazine would in that time in 99 cases out of 100 have been removed.

The Rudyard Kipling articles copied from the 'Times.'

In a recent case (*a*) the proprietors of the 'Times' brought an action against the proprietor and publisher of the 'St. James's Gazette,' to restrain the defendants from further publishing any copy of a newspaper containing any copy of an article by Mr. Rudyard Kipling, or substantial portions thereof, and also extracts from the 'Times' contained in twenty-two separate paragraphs of the 'Gazette' of the 13th of April. An interlocutory order had been made restraining the publication of the Rudyard Kipling article. It was not denied by the defendants that they had copied some two-fifths of the article,

(*a*) *Walter* v. *Steinkopff* (1892), 3 Ch. 489 : 8 T. L. R. 633.

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and all the paragraphs from the 'Times' practically *verbatim*, but it was contended that the consent of the proprietors of the 'Times' might be assumed if the four following conditions were observed:—(i.) That the source of the information was acknowledged; (ii.) That the paper copying and the paper copied were not direct rivals or competitors; (iii.) That the paper copied from had also copied, thereby implying that it agreed to a free interchange of literary and other matter; (iv.) That the editor of the paper copied had given no notice of his objection to matter being copied. It was proved by the 'Times' that the copyright in the Rudyard Kipling article and in those of the 22 paragraphs was vested in them. Mr. Justice North in delivering judgment, said that the plaintiffs could not have asked successfully for the interference of the court with respect to the paragraphs in which they had not proved that they had any copyright: their claim to relief was confined to the Rudyard Kipling article, and three of the paragraphs in which they had proved that they had copyright. With regard to the article the plaintiffs' case was clear, it was practically undisputed by the defendants' advisers, the defendants had deliberately reprinted the most attractive portion of an article which they admitted they knew had been acquired by the plaintiffs at a high cost. There were purposes, no doubt, for which notwithstanding the plaintiffs' copyright, the defendants might legitimately have made reasonable extracts, as, for instance, if they had been criticising Mr. Kipling's works, &c., but in the present case there was a mere reproduction of copy without trouble or cost. The same remarks applied also to the three paragraphs. It was said that there was no copyright in news, but there was or might be in a particular form of language or modes of expression by which information was conveyed, and not the less so because the information might be with respect to the current topics of the day. With regard to the quality of the matter copied, the paragraphs pirated were taken in their entirety for the very purpose for which they were used in the 'Times,' viz., to convey information to the readers of the paper. It was not a case of the selection of a part or quotation, or an extract. The defendants had failed to prove that the first three of the four alleged conditions had been observed, but even if they had, the plea of the existence of such a custom or practice of copying as was set up could no more be supported when challenged than the highwayman's plea of the custom of Hounslow Heath. It had often been relied on, but had always been repudiated

by the courts. In the result, therefore, the defendants were entirely wrong.

Law Reports.

It is manifest, also, from what fell from Lord Chancellor Cottenham in *Saunders* v. *Smith* (*a*), that he entertained no doubt (although he did not decide the point) that there might be a violation of the copyright of volumes of reports, by copying *verbatim* a part only of the cases reported. It is questionable, how far and to what extent certain cases in Law Reports may be reprinted at length in a treatise on the particular subject to which they relate; but it is clearly piracy to collect together, and reprint from the reports all the cases upon a particular subject, though the collection and classification may be new, and the publication be adorned with the addition of several unpublished decisions and notes (*b*). In the case last cited, however, the substance and value of the book consisted mainly of the cases pirated; and a case presenting greater difficulty was that of the well-known book entitled 'Smith's Leading Cases,' where the annotations really form the substance and essence of the work. In regard to the legal right in the last-mentioned case (*c*) Lord Cottenham said: "In this case I find the publication complained of to be of a character which, whether it be or be not an infringement of the copyright of the plaintiffs, is a course of proceeding which has been pretty largely admitted, and pretty generally adopted. Several cases occurred to me, and several were mentioned to me at the bar, in which a gentleman at the bar, desirous of publishing a work upon a particular subject, has collected the cases upon that subject, and has taken these cases, generally speaking *verbatim*, from reports which are covered by copyright. No instance has been represented to me in which those entitled to the copyright have interfered; no judgment, therefore, has been pronounced upon that subject. I am not stating whether the owner of the copyright is entitled to interfere in such a case, or whether the use of published reports is or is not to be permitted. That is a question of legal right upon which I find at present no reason for coming to an adjudication." But in a subsequent case, where eleven cases only had been copied *verbatim*, and a considerable number of what were called abridged cases were mere copies of the plaintiff's with slight variation, Sir L. Shadwell, V.-C., granted an injunction (*d*).

(*a*) (1838), 3 My. & Cr. 711; see *Hodges* v. *Welsh* (1840), 2 Ir. Eq. Rep. 266; *Butterworth* v. *Kelly* (1888), 4 T. L. R. 430. (*b*) *Hodges* v. *Welsh*, *supra*.

(*c*) *Saunders* v. *Smith* (1838), 3 My. & Cr. 711, 728.

(*d*) *Sweet* v. *Shaw* (1839), 3 Jur. 217; 8 L. J. Ch. 216; see *Wheaton* v. *Peters* (1834), 8 Peters (Amer.) 591.

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He distinguished the case from *Saunders* v. *Smith*. "In that case," said he, "there was no question but some parts of the plaintiff's work had been copied in the defendant's work. But there the publication of the defendant appeared to me to be altogether distinguished from that in which the cases originally appeared, and one could never be substituted for the other. In this case, from the class of persons who are held out as likely to be purchasers of the defendant's publication, I think it may be materially injurious to the sale of the plaintiff's work." This was the true criterion of the infringement, and it may be said generally that in cases where the work in which the copying or extract is introduced, is a new and distinct work, and not a work with merely colourable variations, the test which the court will apply is the capability of the new work being taken as a substitute for the whole work. In *Lewis* v. *Fullarton* (*a*), the case of a typographical dictionary, Lord Langdale held that largely copying from a work, in another book having a similar object, was a violation of that copyright, although the same information might have been (but, in fact, was not) obtained from common sources, open to all persons; and accordingly in that case he granted an injunction as to the parts pirated, notwithstanding the fact that there was much which was original in the new work (*b*).

Selections from various writers.

Where the defendant had published a 'Book of the Poets,' with the object of illustrating the characteristics of various poets, and the progress of English poetry during the nineteenth century, the work was held to be piratical. The defendant had made 425 selections and extracts, from forty-three poets, and they were employed to illustrate an original essay of thirty-four pages on English poetry of the period covered, twenty-three biographical sketches of one page each, and twenty shorter notices of authors. Besides extracts, six poems —in all of which the copyright was still subsisting—were taken in their entirety from Campbell's works. "If," said Vice-Chancellor Shadwell, "there were critical notes appended to each separate passage, or to several of the passages in succession which might illustrate them, and show from whence Mr. Campbell had borrowed an idea, or what idea he had communicated to others, I could understand that to be a fair criticism. But there is, first of all, a general essay, then there

(*a*) (1839), 2 Beav. 6.
(*b*) See *Cox* v. *The Land and Water Co.* (1869), 18 W. R. 206.

follows a mass of pirated matters, which in fact constitutes the value of the volume" (*a*).

The custom of the trade no excuse.

The copying into a newspaper whole articles taken from another periodical—as a monthly magazine—professedly for the purpose of reviewing, is, as we have seen, an unlawful use, and a Court of Equity will restrain the publication of the work containing these articles, notwithstanding an allegation that it is the custom of the trade (*b*).

(*b*) Common source.

The defence of 'fair quotation' may be pleaded where the copyist has taken original *copyright* matter from a previous work. The second common defence above alluded to (*c*) is raised where the previous writer has embodied in his work information which is matter of common knowledge or common observation, and which cannot well be put in different language, or selections from non-copyright sources.

This defence is chiefly raised in cases of compilations. All definitions of the same thing must be nearly the same, and descriptions, which are definitions of a more lax and fanciful kind, must always have in some degree that resemblance to each other which they all have to their object. Consequently in compiling such works as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, concordances, encyclopædias, itineraries, guide books, and similar productions, the materials, to a considerable extent, must be nearly identical, and the prior compiler cannot monopolise what did not originate with himself, nor a subsequent compiler employ a prior arrangement and materials to such an extent as to be a substantial invasion of the anterior compilation.

In *Scott* v. *Stanford* (*d*), the plaintiff had published statistical returns of all coal imported into London, and the defendant, in giving the universal statistics of the United Kingdom, had copied from the plaintiff's work to the extent of one-third of the whole of the defendant's work, at the same time acknowledging the source from which his information was derived. Vice-Chancellor Wood decided, that having regard to the

(*a*) *Campbell* v. *Scott* (1842), 11 Sim. 31; *Moffatt & Paige* v. *Gill* (1902), 86 L. T. 465; 50 W. R. 528; *MacMillan* v. *Suresh Chander Deb*, 17 Indian L. R., Calcutta Series, 951.

(*b*) *Maxwell* v. *Somerton* (1874), 30 L. T. 11; 22 W. R. 313; *Walter* v. *Steinkopff* (1892), 3 Ch. 189.

(*c*) *Ante* p. 156.

(*d*) (1867), L. R. 3 Eq. 718; *Morris* v. *Ashbee* (1868), 19 L. T. 550: L. R. 7 Eq. 34; *Mawman* v. *Tegg* (1826), 2 Russ. 398: *Jarrold* v. *Houlston* (1857), 3 K. & J. 708; *Cox* v. *The Land and Water Co.* (1869), 18 W. R. 206: L. R. 9 Eq. 324: *Trade Auxiliary Co.* v. *Middlesbrough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425; *Cate* v. *Devon and Constitutional Newspaper Co.* (1889), 40 Ch. D. 500.

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quantity and matter of the information which had been republished without the exercise of any independent thought and labour, and the prejudice to the plaintiff in having the sale of his work superseded by this republication, the plaintiff was entitled to an injunction. If the defendant, after collecting the information for himself, had checked his results by the plaintiff's tables, that would have been a widely different thing from the wholesale extraction of the vital part of his work. But no man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information although he may append additional information to that already published. This is consonant to the law as laid down in *Kelly* v. *Morris* (*a*), which was in the following terms: In the case of a dictionary, map, guide-book, or directory, where there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book, he must count the milestones for himself, . . . and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained.

From these observations it is not to be inferred that in compiling a directory the compiler may not look into the previous directory of another for the purpose of ascertaining where a particular person lives, and for the purpose of ascertaining from that book whether or not it is worth his while to call upon that person (*b*); they imply no further than that he may not take a passage from the directory, and go and see whether it happens to be accurate, and if it be accurate, bodily copy it into his directory.

This latter is precisely what was done in *Morris* v. *Ashbee* (*c*). The defendant copied the plaintiff's book, and then sent out canvassers to see if the information so copied was correct. If the canvasser did not find the occupier of the house at home, or could get no answer from him, then the information copied from the plaintiff's book was repeated bodily, as if it were a question for the occupier of the house merely, and not for the compiler of the previous directory. The copying was as direct

(*a*) (1866), L. R. 1 Eq. 697.

(*b*) *Morris* v. *Wright* (1870), 22 L. T. 78; 18 W. R. 327; L. R. 5 Ch. 279; *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718; *Cox* v. *Land and Water Journal Co.* (1869), 9 Id. 324; *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 251; *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Lamb* v. *Evans* (1892), 3 Ch. 462; (1893), 1 Ch. 218; *Kelly's Directories* v. *Gavin & Lloyds* (1901), 1 Ch. 374; (1902), 1 Ch. 631.

(*c*) (1868), 19 L. T. (N.S.) 550; L. R. 7 Eq. 34.

in the case of *Kelly* v. *Morris*, to which we have already referred. Not only were the slips for the purpose of canvassing copied, but the course pursued really was, that when a slip was presented to the person who was canvassed, and his permission received for the insertion of the particular entry, the slip was forthwith copied into the book. "Now it is plain," observed Lord Justice Giffard, "that it could not be lawful for the defendants simply to cut the slips, which they have cut from the plaintiff's directory, and insert them in theirs. Can it then be lawful to do so, because, in addition to doing this, they sent persons with the slips to ascertain their correctness? I say, clearly not" (*a*). "In *Pike* v. *Nicholas* (*b*) we had this: Two rival books were published with reference to the same subject matter, and we thought certainly that the defendant had been guided by the plaintiff's book, more or less, to the authorities which the plaintiff had cited; but it was a perfectly legitimate course for the defendant to refer to the plaintiff's book, and if he did, taking that book as his guide, himself go to the original authorities, and compile his book from the orginal authorities, he made no unfair or improper use of the plaintiff's book" (*c*).

How far prior literature may be used.

The question as to how far advantage may be reaped from the work of another, and what use may be legitimately made of it, is difficult of solution. Perhaps the strongest case in favour of the adoption by a subsequent compiler of the work of a preceding one, is that of *Cary* v. *Kearsley* (*d*), where Lord Ellenborough thought that the former might fairly adopt part of the work of the latter, and might so make use of his labours for the promotion of science and the benefit of the public; but having done so, he was of opinion that the question would be, was the matter so taken used fairly with that view, and without what he might term the *animus furandi*? For while he considered himself bound to secure every man in the enjoyment of his copyright, he was fearful of putting manacles upon science.

Sale of a sheet almanac printed from a directory restrained.

Where the defendant published a sheet almanac containing matter pirated from a distinct part of a directory published by the plaintiff, affording information with respect to the post office, compiled from public documents, and the matter pirated formed an exceedingly small portion of the plaintiff's work,

(*a*) (1868) *Morris* v. *Ashbee* L. R. 7 Eq. p. 41. (*b*) (1870), 38 L. J. (Ch.) 529.

(*c*) Per Giffard, V.-C., *Morris* v. *Wright* (1870), 22 L. T. at p. 82. "The true principle in all these cases," said Vice-Chancellor Hall, in *Hogg* v. *Scott* (1874), L. R. 18 Eq. 458, "is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work; that is, in fact, merely to take away the result of another man's labour, or, in other words, his property." (*d*) (1802), 4 Esp. 168; 6 R. R. 846.

though they bore a great proportion to the other matters in the defendant's work; the court granted and continued an injunction against him (*a*).

Railway guides.

In *Leslie* v. *Young* (*b*) the appellant had compiled a railway guide affecting the Perth district, and he sought an injunction against the respondents, the publishers of a new Perth railway time-table, to restrain, *inter alia*, the sale of their time-tables for July 1891, on the ground of infringement. It appeared that the appellant's time-table consisted of a train service from Perth, selections for this purpose having been made from official time-tables, and also of information as to circular tours convenient to be taken from Perth which had not merely been selected from official tables, but condensed and arranged. The appellant complained that the respondents, instead of going to the common and public sources for materials, substantially copied both his time-tables and circular tour information, and thus took advantage of his skill and labour in condensing into a small space a huge mass of information. The respondent practically admitted that he had copied the appellant's circular tour information, and, in respect of this, an injunction was granted, but the House of Lords refused an injunction in the case of the time-tables.

This case is not very easy to follow, and the facts are not very clearly reported, but the Lords Justices seem to have based their decision as much on the ground that the appellant's time-table was not a proper subject for copyright, as upon the ground that the respondents had not infringed it.

The 'Guide to Science,' and the 'Reason Why.'

In *Jarrold* v. *Houlston* (*c*), the publishers of Dr. Brewer's 'Guide to Science' obtained an injunction against the publication of the 'Reason Why.' The works in controversy were written on the same plan, and presented, in the form of question and answer, popular information on a variety of scientific subjects. The earlier book, Dr. Brewer's 'Guide to Science,' had evidently been used to a considerable extent in the preparation of the later one, although copying was denied. The judge said: "I take the illegitimate use, as opposed to the legitimate use of another man's works on subject matters of this description to be this: if, knowing that a person whose work is protected by copyright has, with considerable labour, compiled from various sources a work in itself not original, but which he has digested and arranged, you, being minded to compile a work of a like description, instead of taking the

(*a*) (1840), *Kelly* v. *Hooper*, 4 Jur. 2. (*b*) (1894), A.C. 335.
(*c*) (1887), 3 K. & J. 708; 3 Jur. (N.S.) 1051.

pains of searching into all the common sources, and obtaining your subject matter from them, avail yourself of the labour of your predecessor, adopt his arrangements, adopt, moreover, the very questions he has asked, or adopt them with but a slight degree of colourable variation, and thus save yourself pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use." But where the same plaintiffs filed a bill against the publishers of a work called 'Class Book of Modern Science,' compiled by Messrs. Thomas and Francis Bullock, for a piracy of their 'Dr. Brewer's Guide,' and it was admitted by the defendant that he had referred to the plaintiffs' book in the course of compiling the 'Class Book'; but he insisted that every fact or illustration referred to in the 'Class Book' was verified by the labour and research of the authors themselves, by means of actual observation, inquiry, or experiment where such was possible, and by reference to scientific authorities and standard works of which the plaintiffs' book did not affect to be one; it was held by Vice-Chancellor James, that though if any part of a work complained of was a transcript of another work, or with only colourable additions and variations, and prepared without any real independent literary labour, such portion of the work complained of was piratical, yet it was impossible to establish a charge of piracy where it was necessary to track mere passages and lines through hundreds of pages, or where the authors of a work challenged as piratical had honestly applied their labours to various sources of information. The learned Vice-Chancellor saying, "The whole of the part about sound, fogs, winds, dew, and hoar-frost in the defendant's work has a striking similarity, almost identity of appearance, with parts of the plaintiffs' work. The defendant's authors, however, have both of them sworn positively that they did not copy from the plaintiffs' work, although that work was known to them, and had been used in tuition, in common with nearly fifty other books of the same character, and on the same topics. These authors have not been cross-examined. The defendant's counsel have gone through the works in question passage by passage, and have shown that in nearly all the instances of alleged piracy, the defendant's production had been, in fact, taken from other works which were antecedent to both plaintiffs' and defendant's books. The plaintiffs said, that the difference of language between the two, was part of the defendant's authors' fraud and artful disguise of what they had done. But the language thus complained of, is conclusively

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traced to other books. This fact recoils destructively on the plaintiffs' case, for it goes far to show that the defendant's writers honestly applied their labours to various sources of information. I do not consider that the imitation of the questions in the plaintiffs' book is a piracy, so long as the defendant's writers have gone to independent sources in the preparation of their answers" (*a*).

A compiler must produce an original result.

The rule appears now to be settled, that the compiler of a work in which absolute originality is of necessity excluded, is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as *to produce an original result*, provided that he does not deny the use made of such preceding works, and the alterations are not merely colourable (*b*).

So in the case of a descriptive catalogue of fruit and trees, the court was of opinion that the later compiler might use the work of his predecessor as a guide or instructor; but might not copy the descriptions from it, although he should verify and correct them from specimens of fruit before him. Though he could not be prevented from getting much aid in the way of information, suggestions, &c., from the protected work open before him, he must write his own descriptions from actual specimens, or common sources of information (*c*).

The case of a dictionary analyzed.

To further illustrate the principle, take the case of a dictionary. There may be a certain degree of skill exhibited as to order and arrangement, and there may be a good deal of ingenuity exhibited in the selection of phrases and illustrations, which are the best exponents of the sense in which the word is to be used: and there may also be great labour in the logical deduction and arrangement of the word in its different senses, when the sense of the word departs from its primary signification; but there cannot be copyright in much of the information contained in the numerous dictionaries published, each necessarily having a large number of words identically similar. The great point to decide in such cases is, as we

(*a*) *Jarrold* v. *Heywood* (1870), 18 W. R. 279.

(*b*) *Spiers* v. *Brown* (1858), 6 W. R. 352; *Reade* v. *Lacy* (1861), 1 J. & H. 524: and in the case of a catalogue, *Hotten* v. *Arthur* (1863), 1 H. & M. 603: 32 L. J. (Ch.) 771; 11 W. R. 934; 9 L. T. 199.

(*c*) *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Cary* v. *Kearsley* (1802), 4 Esp. 168: *Matthewson* v. *Stockdale* (1806), 12 Ves. 270; *Longman* v. *Winchester* (1809), 16 Ves. 269; *Bailey* v. *Taylor* (1829), 3 L. J. (O.S.) 66; *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737; *Kelly* v. *Hooper* (1840), 4 Jur. 21; *Murray* v. *Bogue* (1852), 1 Drew. 353.

have already stated, whether in the particular case the work is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work (*a*).

The case of *Spiers* v. *Brown*.

Lord Hatherley, while Vice-Chancellor, in the case of *Spiers* v. *Brown* (*b*), thus summed-up the law in his peculiarly lucid style: All cases of copyright were very simple when a work of an entirely original character was concerned, being a work of imagination or invention on the part of the author, or original in respect of its being a work treating of a subject common to mankind, such as history, or other branches of knowledge varying much in their mode of treatment, and in which the hand of the artist would be readily discerned. But the difficulty that arose in cases of the class then before him was, that they not only related to a subject common to all mankind, but that the mode of expression and language was necessarily so common that two persons must, to a very great extent, express themselves in identical terms in conveying the instruction or information to society which they were anxious to communicate. The most obvious case was that of figures, such as the table of logarithms—the case before Sir John Leach—where it would be impossible to deviate in the calculations, or to vary the order, and the result must be identical. The same might be said of directories, calendars, court guides, and works of that description. Those were cases in which the only mode of arriving at the amount of labour bestowed was by the common test resorted to of discovering the copy of errors and misprints, indicating a servile copying (*c*).

Editing a non-copyright work.

Where a writer has edited a non-copyright work with notes, he cannot, of course, prevent another from editing the same

(*a*) *Vide Wilkins* v. *Aikin* (1810), 17 Ves. 422; *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737; *Cornish* v. *Upton* (1861), 4 L. T. 863.

(*b*) (1858), 6 W. R. 352.

(*c*) This is one of the surest tests of copying, see *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 251; *Cox* v. *Land and Water* (1869), L. R. 9 Eq. 324. In *Murray* v. *Bogue* (1852), 1 Drew 353, 366, where instances were stated in the bill and at the bar in which the defendant had the plaintiff's errors, Vice-Chancellor Kindersley said, "Now the use of showing the same errors in both is, that where the defendant says he has got his information, not from the plaintiff, but from other sources, if the evidence is unsatisfactory on the question whether the defendant did use the plaintiff's work or not, to show the same errors in the subsequent work that are contained in the original, is a strong argument to show copying." It will be in the defendant's favour if he shows that the matter in his own book is free from many of the errors in the plaintiff's; but still the errors may have been corrected in copying. In *M'Neill* v. *Williams* (1840), 11 Jur. 314, it appeared that seven errors in the plaintiff's mathematical tables were also found in those of the defendant. The latter declared that this was accidental, and that the plaintiff's book contained seventy errors not to be found in his own. It does not appear what importance the Court attached to this circumstance; but the injunction was refused.

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work, but the later writer must go to original sources and not copy directly from the previous writer's work. Thus, where the plaintiff had issued an edition of the 'Letters of Dorothy Osborne,' the originals of which had subsequently come to the British Museum and, it was alleged, were not the subject of copyright, and the defendants, in publishing a new edition of the same letters, had sent the plaintiff's text of the letters directly to the printers, instead of having them copied from the MSS. in the British Museum, Mr. Justice Farwell indicated such a strong opinion that this method could not be defended, that the defendants submitted to a perpetual injunction (*a*).

Selections and quotations from non-copyright sources.

It is obvious that in many cases of compilations their whole merit lies in their accuracy and completeness; but in the case of a work comprising selections or quotations from various works which are not the subject of copyright, there is often an additional merit in the selection. It has been contended that the same principles govern both classes of works, but this contention was, in a recent case (*b*), repudiated by Lord Justice Collins. "Counsel justified," he said, "annexing another man's quotations on the ground that you may follow an indication given in another book as to the place where you will find authorities; that you have the right to consult them; and that all the defendant Mr. Marshall does, being directed by a reference to a particular quotation, is to go and look to the author and see whether the quotation corresponds with the text, and, if so, the text being common property, he is at liberty to annex that quotation. I cannot admit that for a moment. He rather suggested that it was justified by the cases relating to directories, which say that you can, where another man has compiled a directory, simply take his sheets with you and go and see whether the existing facts concur with the description in the sheets, and that, if you do, you may publish the result as your own. Certainly; but are you at liberty to apply the same principle to a series of quotations—to take the references given by one author, although he quotes such and such a passage as illustrating a particular matter and to say: 'I will just go and see if that is correctly copied or not, and if it is correctly copied, I propose to introduce it with any other which illustrates the particular passage, and I propose to adopt that as my own work?' That leaves out the whole merit; the felicity of the quotation; its

(*a*) *Parry* v. *Moring & Gollancz*, Farwell, J., 3rd April, 1903, see *ante* p. 33.
(*b*) *Moffatt & Paige* v. *Gill & Sons* (1902), 86 L. T. at p. 470; cf. *Macmillan* v. *Suresh Chunder Deb*, 17 Ind. L. R., Calcutta Series, 951, where an infringement of the 'Golden Treasury' was restrained.

adaptability to a particular end; its illustration of a particular characteristic; all those things enter into the choice of one quotation as apart from another. If you obey a certain direction to go to a certain place, it does not entitle you to annex the skill and judgment and taste which has dictated the selection. . . . It seems to me that the law is clearly such as to entitle the plaintiff to complain if quotations selected and arranged by him are imitated and adopted by the defendant."

Edition of 'As You Like It.'

The case last cited (*a*) is an instructive one upon the whole subject of infringement. The plaintiffs, Moffatt and Paige, Ltd., were the registered proprietors of the copyright of an annotated edition of Shakespeare's play 'As You Like It," edited by Thomas Page and published in the year 1893. In March 1900 the defendants, Messrs. Gill and Sons, published an annotated edition of the same play, edited by the defendant Marshall. Messrs. Gill and Sons had in the year 1899 produced another edition of the same play, by the same editor, and an action had been brought by Messrs. Moffat and Paige in respect of that edition. This action, in respect of the earlier edition, to which the defendant Marshall was not a party, was disposed of by consent, Messrs. Gill and Sons agreeing to pay certain damages and costs and undertaking to destroy any copies in their possession. After this, Messrs. Gill and Sons instructed the defendant Marshall to prepare another edition, and it was in respect of this later edition that the plaintiffs now sued. The plaintiffs, by their particulars, alleged infringements under five heads: (1) That the general arrangement of the defendants' book, including a glossary, was copied from the plaintiffs'; (2) that sketches of character were copied; (3) that certain passages were copied, instancing a passage from Lady Martin's 'Shakespeare's Female Characters' set out in the plaintiffs' book; (4) that literary notes were copied; and (5) certain other infringements. The defendant Marshall alleged that his book was the result of independent labour, making a legitimate use of the plaintiffs' book in common with the works of other commentators.

The way in which the second edition was prepared is thus described by Lord Justice Collins in his judgment:—"The first edition could not be defended. That was admitted by the publishers. It was not admitted by the author in the first proceedings, because he was not a party thereto. But, as a

(*a*) *Moffatt & Paige* v. *Gill & Sons* (1901), 84 L. T. 452: 49 W. R. 438; on appeal (1902), 86 L. T. 465: 50 W. R. 528.

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result of the examinatior in the present action, there is a practical admission by the author himself that the first edition could not be defended. What is the process that the defendant has adopted by which his second edition has been developed? He has in his possession the proofs of the first edition; he carefully re-reads those proofs, and he puts marks, which, though they do not efface them from his view, do denote the fact that certain particular passages are such that he thinks they cannot stand, having regard to what happened at the first trial. He marks those passages, but they are so worked as to be still obvious to the eye and capable of being read, although they are not to appear as in that edition. He has before his eye his own edition, no doubt; but, in fact, so far as the matters in the case are concerned it is practically the work of the defendants, because it is a copy of the plaintiffs' book. It is garbled to a certain extent, but it is nothing better than a copy. Having that before him, he makes certain notes, indicating what passages cannot stand, and for which, therefore, some substitution must be found. We have heard and we see as the result in the second edition changes of expression which he has made, while conveying the same thing in substance—the alteration of the order of quotations, while leaving the quotations there themselves, the retention of the string of quotations used, and the purpose to which they were applied; and, further, the same general system of analysis of character, which had been reproduced by the defendant, Mr. Marshall, in the first edition of his own. That, broadly speaking—I am not pretending to treat the matter with exactitude of detail—is the process by which the second edition was reproduced" (*a*). In the result, the Court of Appeal, reversing Kekewich, J. (who decided on the ground of want of an *animus furandi*), granted a perpetual injunction.

3. By imitating the whole or part by reproduction with colourable alterations.

3rd. Copyright may be infringed by imitating the whole or a part, or by reproducing the whole or a part with colourable alterations.

(*a*) 86 L. T. at p. 468. In *Black* v. *Murray* (9 Sc. Sess. Cas. 3rd Ser. 355), where Lockhart's annotated edition of Scott's 'Minstrelsy of the Scottish Border' was in question, and it appeared that of the 200 notes added by the editor, all but fifteen were quotations from common sources, and the ballads themselves were common property, Lord Kinloch said: "To a considerable extent the notes borrowed (to use an euphemism) from Messrs. Black's edition consist of quotations from various authors, employed by Mr. Lockhart to illustrate ballads in the 'Minstrelsy.' It was perhaps thought that to repeat quotations from well-known authors was not piracy. If so, I think a great mistake was committed. In the adaptation of the quotation to the ballad which it illustrates, the literary research which discovered it, the critical skill which applied it, there was, I think, an act of authorship performed, of which no one was entitled to take the benefit for his own publication, and thereby to save the labour, the learning, and the expenditure necessary even for this part of the annotation."

Distinction between a copy and an imitation.

A copy is one thing, an imitation or resemblance another. It is indeed certain, that whoever attempts any common topic will find unexpected coincidences of his thoughts with those of other writers; nor can the nicest judgment always distinguish accidental similitude from artful imitation. "There is likewise," says Dr. Johnson, "a common stock of images, a settled mode of arrangement, and a beaten track of transition, which all authors suppose themselves at liberty to use, and which produce the resemblance generally observable among contemporaries. So that in books which best deserve the name of originals there is little new beyond the disposition of materials, already provided; the same ideas and combinations of ideas have been long in the possession of other hands; and by restoring to every man his own, as the Romans must have returned to their cots from the possession of the world, so the most inventive and fertile genius would reduce his folios to a few pages. Yet the author who imitates his predecessor only by furnishing himself with thoughts and elegancies out of the same general magazine of literature, can with little more propriety be reproached as a plagiary, than the architect can be censured as a mean copier of Angelo or Wren because he digs his marble from the same quarry, squares his stones by the same art, and unites them to columns of the same order."

There are many imitations of Homer in the '*Æneid*'; but no one would say that the one was a copy of the other. So also can similar passages be found in Virgil and Horace:

"*Hæ tibi erunt artes—*
Parcere subjectis, et debellare superbos."
VIRGIL.

"*Imperet, bellante prior, jacentem*
Lenis in hostem."
HORACE.

And Cicero observes of Achilles, that had not Homer written, his valour had been without praise: *Nisi Ilias illa extitisset, idem tumulus qui corpus ejus contexerat, nomen ejus obruisset;* while Horace remarks that there were brave men before the wars of Troy, but they were lost in oblivion by the want of a poet:

"*Vixere fortes ante Agamemnona*
Multi; sed omnes illacrymabiles
Urgentur, ignotique longâ
Nocte, carent quia vate sacro."

There may be a strong likeness without an identity. The question is, therefore, in many cases a very delicate one: what

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degree of imitation constitutes an infringement of the copyright in a particular composition? Certainly not such a similitude as the instances from the classics given above.

It is very evident that any use of materials, whether they are figures or drawings, or other things which are well known and in common use, is not the subject of a copyright, unless there be some new arrangement thereof. Still, even here, it may not always follow that any person has a right to copy the figures, drawings, or other things, made by another, availing himself solely of his skill and industry, without any resort to such common source. In all cases the question of fact to come to the jury is, whether the alterations be colourable or not. There must be a similitude, so as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript; so with regard to charts, there is no monopoly in that subject; but upon a question of the above nature the jury must decide whether the latter work be a servile imitation of the former or not.

In *Trusler* v. *Murray* (*a*) Lord Kenyon put the point in the same light, and said, "The main question here is, whether, in substance, the one work is a copy and imitation of the other; for undoubtedly, in a chronological work (such was the character of the work before the court) the same facts must be related." And Mr. Justice Story, in his elaborate and learned judgment in *Emerson* v. *Davies* (*b*), laid it down as the clear result of the authorities in cases of this nature, that the true test of piracy or not, is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff as the model of his own book, with colourable alterations and variations only to disguise the use thereof: or whether his work is the result of his own labour, skill, and use of common materials and common sources of knowledge, open to all men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, *quoad hoc*, a servile or evasive imitation of the plaintiff's work, or a *bonâ fide* original compilation from other common or independent sources.

An American court, in speaking of a case in which the defendant had pirated a portion of an arithmetic belonging to the plaintiff, observed that the real question on the point was not whether certain resemblances existed, but whether these resemblances were purely accidental and undesigned, and unborrowed, because arising from common sources accessible

(*a*) (1789), 1 East, 363, note. (*b*) (1845). 3 Story (Amer.) 768, 793.

to both the authors, and the use of materials equally open to both—whether, in fact, the defendant used the plaintiff's work as his model, and imitated or copied that, and did not draw from such common sources or common materials. Then again, it had been said that, to amount to piracy, the work must be a copy and not an imitation. This, as a general proposition, could not be admitted. It was true the imitation might be very slight and shadowy. But, on the other hand, it might be very close, and so close as to be a mere evasion of the copyright, although not an exact and literal copy. "It falls within that class of cases," said Mr. Justice Story, "where the differences between different works are of such a nature, that one is somewhat at a loss to say whether the differences are formal or substantial; whether they indicate a resort to the same common sources to compile and compose them, or one is (as it were) *uno flatu* borrowed from the other, without the employment of any research or skill, with the disguised but still apparent intention to appropriate to one what in truth belongs exclusively to the other, and with no other labour than that of mere transcription, with some omissions or additions as may serve merely to veil the piracy. It is like the case of patented inventions in art or machinery, where the resemblances or diversities between the known and the unknown, and between invention and imitation, are so various or complicated, or minute or shadowy, that it is exceedingly difficult to say what is new or not, or what has been pirated and what is substantially different. The approaches on either side may be also infinitely varied, and the identity or diversity sometimes becomes almost evanescent. In many cases, the mere inspection of a work may at once betray the fact that it is borrowed from another author, with merely formal or colourable omissions or alterations. In others, again, we cannot affirm that identity in the appearance or use of the materials is a sufficient and conclusive test of piracy, or that the one has been fraudulently or designedly borrowed from the other. Take the case, for example, of two maps of a city, a county or a country. We cannot predicate that the one is a piracy from the other, simply because their external appearance is in nearly all respects the same, with or without some additions or alterations or omissions. Take the case of two engravings copied from the same picture, or two pictures of natural objects by different artists; it would not be practicable, in many cases, from the mere inspection of them and their apparent identity, to say, that the one was a transcript of the other. It would

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be necessary to resort to auxiliary and supplementary evidence to establish the fact either way (*a*)."

One test, substantial identity.

Cases such as those referred to, namely, those where there is a resemblance between the substance and the general scheme of the two works in question, while at the same time the language of each is by no means similar, occasion great difficulty. The inquiry usually resolves itself into a matter of fact which rests with the court to determine—Is there such a resemblance between the two works in controversy as to constitute an infringement of copyright.

The most general test is that of substantial identity. Is the similarity between the two works such as to make the one substantially identical with the other? Has the second author produced what is substantially an independent work, or has he appropriated merely the fruits of another's labour? (*b*) Each case must depend on its own peculiar circumstances, and different judges may upon the very same evidence arrive at different conclusions.

Not every imitation a proof of plagiarism.

"As not every instance of similitude," observes Dr. Johnson, "can be considered as a proof of imitation, so not every imitation ought to be stigmatized as plagiarism. The adoption of a noble sentiment, or the insertion of a borrowed ornament, may sometimes display so much judgment as will almost compensate for invention; and an inferior genius may, without any imputation of servility, pursue the path of the ancients, provided he declines to tread in their footsteps."

4. By reproduction under an abridged form.

4th. Copyright may be infringed by reproducing the whole or a part under an abridged form.

A fair abridgment, when the understanding is employed in retrenching unnecessary circumstances, is not a piracy of the original work. Such an abridgment is allowable, and is regarded in the light of a new work. The law with reference to abridgments might, we think, with justice receive some modification (*c*).

(*a*) *Emerson* v. *Davies et al.* (1845), 3 Story (Amer.) 768–784.

(*b*) *Wilkins* v. *Aikin* (1810), 17 Ves. 422; *Mawman* v. *Tegg* (1826), 2 Russ. 385; *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737; *Lewis* v. *Fullarton* (1839), 2 Beav. 6; *Kelly* v. *Hooper* (1840), 4 Jur. 21; *Sweet* v. *Maugham* (1840), 11 Sim. 51; *Sweet* v. *Cater* (1842), *Ib.* 572; *Campbell* v. *Scott*, *Ib.* 31; *Stevens* v. *Wildy* (1850), 19 L. J. (N.S.) Ch. 190; *Rooney* v. *Kelly* (1861), 14 Ir. Com. Law Rep. 158; *Tinsley* v. *Lacy* (1861), 1 H. & M. 747; *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Scott* v. *Stanford* (1867), 3 Id. 718; *Jarrold* v. *Heywood* (1870), 18 W. R. 279; *Cobbett* v. *Woodward* (1874), L. R. 14 Eq. 407; *Ager* v. *Peninsular and Steam Navigation Co.* (1884), 26 Ch. D. 637.

(*c*) On the subject of abridgments the Royal Commissioners on Copyright in their report say: "Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the legislature, could govern all cases that occur. There is

The decisions on the subject are somewhat inconsistent. The fundamental principle on which is based the protection afforded to authors from piracies, appears to be the injury or damage caused to them by the depreciation in the value of their original works. It seems a very unsatisfactory answer to an author, who has been injured by an abridgment, to say, that because the wrongful taker has exhibited talent and ingenuity, both in the taking and in the use which he has made of it, the original author has no remedy, "The form," says Mr. Curtis (*a*), "under which the original matter reappears should be treated as a disguise; and the extent of the transformation shows only the extent to which the disguise has been carried, as long as anything remains which the original author can show to be justly and exclusively his own."

Now, few abridgments do not affect in some way the original work. By the selection of all the important passages in a comparatively moderate space, the quintessence of a work may be piratically extracted, so as to leave a mere *caput mortuum*. These considerations have been relied upon by the judges in coming to a determination upon the subject, and the proposition, that an abridgment is not a piracy of the original copyright, must be received with many qualifications.

To constitute a proper abridgment, the arrangement of the book abridged must be preserved, the ideas must also be taken, and expressed in language not copied but condensed. To copy certain passages and omit others, so as to reduce the volume in bulk, is not such an abridging as the Court would recognise as sufficiently original to protect the author. The judgment of the abridger must be called into play in condensing the views of the author. There is a clear distinction between an abridgment and a compilation. As an American judge (*b*), well observed: "A compilation consists of selected extracts

one form of user of the works of others, however, to which we wish specially to draw attention as being capable of some legislative control in a direction we think desirable. We refer to abridgments.

"At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author.

"We think this should be prevented, and upon the whole we recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright." Par. 67–69.

By Clause 3 of the Copyright Bill of 1900 the exclusive right of making abridgments was to be reserved to the author.

(*a*) 'Copyright,' 272.

(*b*) Leavitt, in *Story's Executors* v. *Holcombe*, 4 McLean (Amer.) 314.

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from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the orginal work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangements of the works cited; the latter must adopt the arrangement of the work abridged. The former infringes the copyright, if matter transcribed, when published, shall impair the value of the original book; a fair abridgment though it may injure the original is lawful."

The first case is that of *Dodsley* v. *Kinnersley* (*a*), where an

(*a*) (1761), Amb. 403. *Gyles* v. *Wilcox* (1740), 2 Atk. 141. See *Pinnock* v. *Rose* (1819), 2 Bro. C. C. 85, note. Mr. Curtis, the learned author of an American work on Copyright, thus states, in his lucid style, the injustice of the law respecting abridgments: "When the author of a book," says he, "of whatever kind, possessing the legal attributes of originality, has secured his copyright according to the prevailing law of his country, he has secured the exclusive right to print and publish his own book. In the jurisprudence with which we are concerned, this right includes the whole book and every part of it; for we have seen that there may be a piratical taking of extracts and passages, and that the quantity thus taken may be immaterial. It includes also, or may include, the style, or language and expression; the learning, the facts, or the narrative; the sentiment and ideas, as far as their identity can be traced; and the form, arrangement, and combination which the author has given to his materials. These are, or may be, all distinct objects of the right of property; and in every work of originality, likely to be abridged or capable of being abridged, they are all important objects of that right. However imperfectly the subject may have been regarded in former times, it is now, I think, to be regarded as settled, that whatever is metaphysically part or parcel of the intellectual contents of a book, if in a just sense original, is protected and included under the right of property vested by law in the author; and it is very material to observe, that the arrangement, the method, the plan, the course of reasoning, or course of narrative, the exhibition of the subject, or the learning of the book, may be, according to its character, as much objects of the right of property as the language and the ideas.

"What then does the maker of an abridgment print, publish, and sell, after he has made it? He has been employed, according to the definition above quoted, 'in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration'; that is to say, he has rejected what *in his judgment* are redundancies. Does this make him the author or proprietor of what remains? If the work be a history, did he, the person abridging it, compile the materials into their present shape, and describe the course of events, and embody the whole of what constitutes the intellectual contents of the book, or are these things the product of another's labour, research, and faculty of writing? If it be a fictitious narrative, whose genius created the characters, and animated them with the sentiments which they utter, and invented the pleasing incidents of their mock existences, and wove the whole into the novel or the poem; which exists as an intellectual whole, after as well as before the process by which 'the unnecessary and uninteresting circumstances' are 'retrenched!' Or, if it be a work of science, or a treatise in any branch of knowledge, whose are the ideas, the course of reasoning and illustration, the plan and analysis of the subject, and the collection and arrangement of materials which constitute the identity of the book? These questions can have but one answer; and if the abridgment, in any given case, consists solely in the reduction of the bulk of the volume by the rejection of redundancies, it is a mere re-publication of a connected series of extracts, in a different juxtaposition from the original author's to which the party had no title whatever. On the other hand, if the abridgment not only rejects redundancies, but also clothes the sentiments and ideas which may be left in different phraseology, then it falls under the predicament of a colourable alteration, which cannot escape the censure of justice." And in a note he takes the above case of Dr. Johnson's 'Rasselas,' and adds, "The moral reflections are left out, the narrative goes into the 'Gentleman's Magazine.' Whose genius produced that stately and immortal fiction?

injunction was applied for, to restrain the publication of an abridgment of Dr. Johnson's 'Rasselas.' It appeared that not one-tenth part of the first volume had been abstracted, and that the injury alleged to have been sustained by the author arose from the abridgment containing the narrative of the tale and not the moral reflections. The Master of the Rolls, Sir Thomas Clarke, refused the injunction, saying, "I cannot enter into the goodness or badness of the abstract. It may serve the end of an advertisement (*a*). In general it tends to the advantage of an author, if the composition be good; if it be not, it cannot be libelled. What I materially rely upon is, that it could not tend to prejudice the plaintiffs, when they had before published an abstract of the work in the 'London Chronicle.' If I were to determine this to be elusory, I must hold every abridgment to be so." Chancellor Kent, in referring to this case, says, "This latitudinarian right of abridgment is liable to abuse, and to trench upon the copyright of the author. The question as to a *bonâ fide* abridgment may turn, not so much upon the quantity as the value of the selected materials" (*b*).

In *Hawkworth* v. *Newbery* (*c*), Lord Chancellor Apsley, having spent some hours in consultation with Mr. Justice Blackstone, decided that an abridgment, where the understanding is employed in retrenching unnecessary and uninteresting circumstances which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work. It requires both invention and judgment, and displays frequently a deal of learning. Lord Hardwicke thus states the rule (*d*):—

"Where books are colourably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment; for abridg-

Who described and created the characters of Imlac, and the Princess, and the Prince of Abyssinia, and placed them in the Happy Valley, and sent them forth in a series of gentle trials and pleasing and sad perplexities, in the world beyond its walls? Who wrote that narrative? Not, certainly, the Grub Street hack, who was employed to 'leave out the reflections.' What he took and his employers published, was the literary property of another, the profits of which the law had not vested in them."—Page 273.

(*a*) It is no defence to say that the pirated work is not offered for sale itself, but merely used to promote the sale of the books mentioned in it; *Hotten* v. *Arthur* (1863), 1 H. & M. 603; 32 L. J. (Ch.) 771; 11 W. R. 934; 9 L. T. (N.S.) 199.

(*b*) 2 Kent's Com. 382, note; *Gyles* v. *Wilcox* (1740), 2 Atk. 141. See Campbell's 'Lives of the Chancellors,' vol. v. p. 56; 2 Story, Eq. Jur. s. 939.

(*c*) (1774), Lofft. 775; *Butterworth* v. *Robinson* (1801), 5 Ves. 709.

(*d*) *Gyles* v. *Wilcox* (1740), 2 Atk. 141. See also the case of *Read* v. *Hodges*, referred to in *Tonson* v. *Walker* (1752), 3 Swanst. 672; *Bell* v. *Walker* (1784), 1 Bro. C. C. 451; *Tinsley* v. *Lacy* (1861), 11 W. R. 877; 1 H. & M. 747.

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ments may, with great propriety, be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shown in them, and in many cases are extremely useful (*a*), though in some instances prejudicial, by mistaking and curtailing the sense of an author."

But an injunction will be granted where the facts and the *terms* in which the facts are related are merely the same in both books. Thus where an injunction was moved for to restrain the publication of a book entitled 'Memoirs of the Life of Mrs. Bellamy,' which was alleged to have been pirated from a book called 'An Apology for the Life of George Anne Bellamy,' and it appeared in evidence that Mrs. Bellamy was author of the latter work; and that she sold the copyright to the plaintiff, who printed it in five volumes at a selling price of fifteen shillings; and that the work against which the injunction was prayed was in one volume, which sold for two shillings and sixpence; upon passages being read from each to show that the *facts*, and even the *terms* in which they were related in the latter work, were frequently taken *verbatim* from the original one, an injunction was immediately granted (*b*).

The question as to how far an abridger may go without infringing the rights of the author was exhaustively considered in an American case which arose respecting Mr. Story's 'Commentaries on Equity Jurisprudence.'

It appeared that the chapters and the subjects were the same in Mr. Story's work and the work complained of; the former book contained 1856 octavo pages, including notes; the latter 348 octavo pages, including notes; a page in the latter contained a little more than one in the former; reduced to the same sized page, the ratio in the amount of matter in the latter book to that in the former was about two to nine. In the entire work of Story there were 226 pages, constituting nearly an eighth part, on which there was some matter which had been extracted in the same language, or very nearly so, into the defendant's book, this matter comprising 879 lines, or about 24 pages of his book, and 30 pages of Story, which made one-fifteenth part of the defendant's book and one-sixtieth of Story; this matter being found in scattered paragraphs in the first third of the defendant's book; all the other portions of Story's book were abridged without any transcription of his common language, the part so abridged comprising two-thirds of the defendant's book. The defence

(*a*) *Hodges* v. *Welsh* (1840), 2 Ir. Eq. Rep. 266.
(*b*) *Bell* v. *Walker* (1784), 1 Bro. C. C. 451.

was set up that the defendant's book was a *bonâ fide* abridgment of the plaintiff's. The Master reported that Story's work had been fairly abridged, and hence that there was no infringement. Against this conclusion, the court found that the first third of the defendant's book, including one hundred pages, was not a fair abridgment, and granted an injunction against that part. The rest was regarded as an abridgment, and its publication was not enjoined. Mr. Justice McLean thus states the principles upon which the decision was arrived at: "This controversy has caused me great anxiety and embarrassment. On the subject of copyright, there is a painful uncertainty in the authorities; and indeed, there is an inconsistency in some of them. That the complainants are entitled to the copyright which they assert in their bill is not controverted by the defendants. The decision must turn on the question of abridgment. If this were an open question, I should feel little difficulty in determining it. An abridgment should contain an epitome of the work abridged—the principles, in a condensed form, of the original book. Now it would be difficult to maintain that such a work did not affect the sale of the book abridged. The argument that the abridgment is suited to a different class of readers, by its cheapness. and will be purchased on that account by persons unable and unwilling to purchase the work at large, is not satisfactory. This, to some extent, may be true; but are there not many who are able to buy the original work, that will be satisfied with the abridgment? What law library does not contain abridgments and digests, from Viner's and Comyn's down to the latest publications? The multiplication of law reports and elementary treatises creates a demand for abridgments and digests: and these being obtained, if they do not generally they do frequently, prevent the purchase of the works at large. The reasoning on which the right to abridge is founded, therefore, seems to me to be false in fact. It does, to some extent in all cases, and not unfrequently to a great extent, impair the rights of the author, a right secured by law.

"The same rule of decision should be applied to a copyright as to a patent for a machine. The construction of any other machine which acts upon the same principle, however its structure may be varied, is an infringement on the patent. The second machine may be recommended by its simplicity and cheapness; still, if it act upon the same principle of the first patented, the patent is violated. Now, an abridgment, if fairly made, contains the principle of the original work; and

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this constitutes its value. Why, then, in reason and justice, should not the same principle be applied in a case of copyright as in that of a patented machine? With the assent of the patentee, a machine acting upon the same principle, but of less expensive structure than the one patented, may be built; and so a book may be abridged by the author, or with his consent, should a cheaper work be wanted by the public. This, in my judgment, is the ground on which the rights of the author should be considered.

"But a contrary doctrine has long been established in England, under the Statute of Anne, which in this respect is, similar to our own statute; and in this country the same doctrine has prevailed. I am therefore bound by precedent, and I yield to it in this instance more as a principle of law, than a rule of reason or justice" (*a*).

In *Dickens* v. *Lee* (*b*), the plaintiff's work was an imaginative tale; the defendant had taken the fable, the characters, the incidents, the names, and even the style of language. It is to be gathered from the report, that thus using all the plaintiff's materials, he had told the story in a shorter manner, and he relied upon abridgment as his defence; but the court held that such an abridgment was not an exercise of mental labour deserving the character of an original work, and granted an injunction, putting the plaintiff to establish his right at law, if the defendant desired it. In this case, Vice-Chancellor Knight Bruce is reported to have said, that he was not aware that one man had the right to abridge the works of another; on the other hand, he did not mean to say that there might not be an abridgment which might be lawful, which might be protected; but, to say that one man had the right to abridge, and so publish in an abridged form, the work of another, without more, was going much beyond his notion of what the law of this country was.

In the case of *Butterworth* v. *Robinson* (*c*), a motion was made upon certificate of the bill, for an injunction to restrain the defendant from selling a work, entitled, 'An Abridgment of Cases argued and determined in the Courts of Law, &c.,' until answer or further order. A copy of the work was handed to the Lord Chancellor. In support of the motion it was stated, that this work was by no means a fair abridgment; that, except in colourably leaving out some parts of the cases, such as the arguments of counsel, it was a mere copy

(*a*) *Story's Executors* v. *Holcombe*, 4 McLean (Amer.) 308.
(*b*) (1844), 8 Jur. 183. (*c*) (1801), 5 Ves. 709.

verbatim of several of the reports of cases in the courts of law, and among them of the 'Term Reports,' of which the plaintiff was proprietor; comprising not a few cases only, but all the cases published in that work; the chronological order of the original work being artfully changed to an alphabetical arrangement under heads and titles, to give it the appearance of a new work. In support of the motion, *Bell* v. *Walker* (*a*) was cited. The Lord Chancellor said, "I have looked at one or two cases, with which I am pretty well acquainted, and it appears to me an extremely illiberal publication. Take the injunction upon the certificate of the bill filed, to give them an opportunity of stating what they can upon it."

Piracy by way of digest.

The leading case on the subject of piracy, by way of digest, is that of *Sweet* v. *Benning* (*b*), where it was held by a majority of the judges that parties who take *verbatim* portions of reports (as the head-notes), the copyright of which belongs to others, and put them together, merely arranged in a different manner (as in an alphabetical order), so as to form a different work, of which they make any considerable proportion, will be guilty of piracy. The court were divided, and accordingly the judges delivered their judgments *seriatim*. Jervis, C.J., on the question of piracy, said: "The head-notes of the 'Jurist' reports may indeed be considered, perhaps, as in themselves a species of brief and condensed reports, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgments at length, and in the other an abstract of the decision, conveying the principle upon which it is founded, and the pith and substance of the case. The defendants have, for the purposes of their digest, copied *verbatim* the head-notes, the shorter species of reports. But if they were allowed to take the head-note, it is plain that they might equally have taken the report. And if they might take either, they might take both, and might republish the entire of the reports, merely altering their arrangement by putting them in alphabetical order. The question is, whether, by this arrangement of matter, which is taken *verbatim* from the plaintiffs' periodical, they acquire a right so to use it. I think not. I admit that a digest may be made from a copyright work without piracy upon it, but that is a work in which a man applies his mind to the labour of extracting the principles of the original work, and by his labour really produces a new work. It is not so where he merely reduces extracts or passages

(*a*) (1784), 1 Bro. C. C. 451.
(*b*) (1855), 16 C. B. 459; Com. Law Rep. vol. ii. pt. ii. 1452.

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of another man's work to an alphabetical order, which is a work a clerk might accomplish, and requires neither learning nor study, but may be little more than a merely mechanical operation of cutting out and classifying under certain letters of the alphabet. In one of the cases cited, the 'Term Reports' were so dealt with, and it was held to be a piracy. I think that case is decisive of the present, and therefore that the plaintiffs are entitled to our judgment."

Lord Hatherley, when Vice-Chancellor, in the case of *Tinsley* v. *Lacy* (*a*), spoke very unfavourably in regard to the rights of an abridger; he said: He must confess that he did not agree in the reasons for upholding such a work given by some learned judges, viz., that an abridger was a benefactor. He should have himself regarded him rather as a sort of jackal to the public, to point out the beauties of authors.

It will be noticed that there has been no modern decision as to the rights of an abridger; but while the general principle must, perhaps, be taken as firmly established, it is thought that the Courts in these days would not regard those rights with a very favourable eye, and would seek rather to restrict, than enlarge, the principle of the decisions on the subject.

What use of former musical composition constitutes a piracy.

In *D'Almaine* v. *Boosey* (*b*) the question arose as to what imitation or use of a musical composition constituted a piracy. In this case the plaintiffs published, first, the overture to Auber's opera of 'Lestocq,' and then a number of airs, and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and that in one of his waltzes he had introduced seventeen bars in succession, containing the whole of the original air, although he had added fifteen other bars which were not to be found in it. It was nevertheless contended that this was not a piracy, because the whole of the air had not been taken; and because the latter publication was adapted for dancing only, and that some degree of art was needed for the purpose of so adapting the piece; and, moreover, but a small part of the merit belonged to the original composer. Lord Lyndhurst, then Lord Chief Baron, observed that it was a nice question, what should be deemed such a modification of an original work as should absorb the merit of the original in the new composition. "No doubt," said he, "such a modification may be allowed in some cases, as in that of an abridgment or a digest. Such publi-

(*a*) (1861), 1 H. & M. 747; 11 W. R. 877; see *Story's Executors* v. *Holcombe*, 4 McLean (Amer.) 308.

(*b*) (1835), 1 Y. & C. 288.

cations are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a *bonâ fide* abridgment, because if it contains many chapters of the original work, or such as made that work most saleable, the maker of the abridgment commits a piracy. Now it will be said that one author may treat the same subject very differently from another who wrote before him. That observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles. It is the air or melody which is the invention of the author, and which may in such case be the subject of piracy; and you commit a piracy if, by taking, not a single bar, but several, you incorporate in the new work that in which the whole meritorious part of the invention consists.

5. By translation.

5th. Copyright may be infringed by reproducing the whole or part under the form of a translation. Translations are protected in this country, and an unauthorized copy of a translation, though the original be not entitled to copyright here, but is open to any number of persons to translate, is a piracy.

Though it does not appear, if the original work be a foreign work, not entitled to protection in this country, and a translation of it be made and published first by A., and a translation be subsequently made and published by B., that this latter would be necessarily a piracy of A.'s translation or an infringement of his right; yet a retranslation without the consent of the author of the original work is a piracy whenever that original work is entitled to copyright.

Translation of protected work a piracy.

It is clear that an unauthorized translation of a protected work is a violation of the copyright therein, for a translation cannot be made without appropriating the entire substance of the protected composition. It has been argued that the translator by his own labour and skill reproduces in a new and useful form what is practically a new work, and that having exercised independent labour in its production he is entitled to publish. But the same reasoning would lead to the conclusion that a person might republish any protected work, if he did so with notes which required the exercise of independent labour. A translation of an unprotected work is certainly a work deserving of copyright, and in respect of which copyright

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may be obtained, but the allowing of a translation to be issued of a protected work without the consent of the author is a very different thing.

Principle on which this rests.

The principle on which the position rests, that an unauthorized translation of a protected work is piratical, is that the property of the author consists not in the language alone; but in the matter of which the language is but the expression and means of communication. It is in the substance of the composition and not in the form only. And the matter is as much taken possession of by the translation into a different language, as it would be by a transcript of its language only (*a*).

The point has only once come before the court, and then the case was decided on other grounds. The case referred to came before Lord Chancellor Macclesfield 180 years ago, when he granted an injunction against an English translation of Thomas Burnett's 'Archæologia Philosophica,' a work which had been published in Latin and registered by the author. The unauthorized publication of the book in England was enjoined, on the ground that it "contained strange notions, intended by the author to be concealed from the vulgar in the Latin language, in which language it could not do much harm." The Chancellor there remarks that "a translation might not be the same with the original, on account that the translator has bestowed his care and pains upon it, and so not within the prohibition of the Act" (*b*).

Translation of a foreign work infringing a protected work.

In *Murray* v. *Bogue* (*c*), a case respecting an alleged infringement of the copyright in a guide-book, the question of translations was again considered. The plaintiff complained that his 'Handbook for Travellers in Switzerland' had been infringed by a guide-book published by the defendant. The latter had been made up from various sources, and in part was an abridged translation of Baedeker's German work, the copyright of which appears not to have been secured in this country. It was claimed, however, on this point that Baedeker's book was a translation of Murray's, and that its retranslation into English by Bogue was a violation of Murray's copyright. The Vice-Chancellor put the following case: If Baedeker's were a translation of Murray's into German, and the other defendant

(*a*) In the case of *Hanfstaengl* v. *Empire Palace* (1894), 3 Ch. 109 at p. 116, Stirling, J., expressed an opinion to the effect that, if at a public meeting some portion of a copyright work was recited or read from an authorized copy of the book, that would be no infringement of the rights of the owner of the copyright.

(*b*) *Burnett* v. *Chetwood* (1720), 2 Meriv. 441; *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77.

(*c*) (1852), 1 Drew. 353, 368.

had retranslated Baedeker's work into English, even if he did not know that Baedeker's was taken from Murray, the plaintiff's book could not be thus indirectly pirated. But it was found that Baedeker's was substantially an original work, and not a reproduction in German of Murray's: and therefore its translation in English could not infringe the copyright in Murray's book (*a*).

Opinions of some that piracy not committed by translation of protected work.

Notwithstanding what has been already said, it must be admitted that there are many who are of the opinion that any work, whether the copyright therein be subsisting or not, may be translated with impunity, and indeed this has been held in America and in India to be the law. In the American case the book in question was Mrs. Stowe's celebrated 'Uncle Tom's Cabin.' She first published it in America and secured the copyright there, subsequently causing it to be translated into German and securing copyright for such translation. Afterwards the defendant Thomas made a translation into German, and this was the piracy complained of. Mr. Justice Grier decided that Mrs. Stowe was not entitled to the protection sought. He considered that by the publication of her book, the creations of the genius and imagination of the author had become as much public property as those of Homer or Cervantes. That Uncle Tom and Topsy were as much *publici juris* as Don Quixote and Sancho Panza. That all her conceptions and inventions might be used and abused by imitators, playwrights, and poetasters. They were no longer her own; those who had purchased her book might clothe them in English doggerel, in German or Chinese prose. Her absolute dominion and property in the creations of her genius and imagination had been voluntarily relinquished, and all that remained was the copyright of her book, the exclusive right to print, reprint, and vend it; and those only could be called infringers of her rights or pirates of her property who were guilty of printing, publishing, importing, or vending without her licence "copies of her book." In tropical but not very precise phraseology, a translation might be called a transcript or copy of her thoughts or conceptions, but in no correct sense could it be called a copy of her book (*b*).

(*a*) See the argument in *Jarrold* v. *Heywood* (1870), 18 W. R. 279.

(*b*) *Stowe* v. *Thomas*, 2 Am. Law Rep. 231; 2 Wall. jr. 547 (Amer.). Since this decision the law in America has been altered by statute. In 1870 it was enacted, section 4952 of the Revised Statutes of 1873–4, that "authors may reserve the right to translate their own works," and this section was amended in 1891, March 3rd, chap. 565, Supplement to the Revised Statutes, and as amended provides that "authors or their assigns shall have the exclusive right to translate any of their works for which copyright shall have been obtained under the laws of the United

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In the Indian case referred to, the plaintiffs were London publishers, and the defendant had translated certain English works (*e.g.*, Todhunter's 'Mensuration,' Barnard Smith's 'Algebra,' &c.) into the Urdu language for the use of students, and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged that they were the proprietors of the copyright, but Farran, J., held that a translation was not a copy, and that the defendant by translating the books had not infringed the plaintiff's copyright (*a*).

The law on this point has since been altered in America, and we trust the principle of the above decisions will never be followed in this country, but that, when the question shall come before the court, it will find itself, as it is practically at present, unfettered by precedent, and able to take that view which will at once afford protection to literary men and be in accord with the spirit of the copyright laws.

By the International Copyright Acts, translations of works, entitled under that Act to protection in this country, are prohibited (*b*).

Compiling for various objects.

It will be seen from what has been already said that there is nothing to prevent a person from copying common materials from an existing compilation, and arranging and combining them in a new form, or using them for a different purpose.

The first compiler had no copyright in the common materials, but only in his own arrangement of those materials, and if this be not infringed, though the subsequent compiler may have considerably profited by his compilation, yet there would be no remedy. There would be a difference, however, if the first compiler had so worked upon the common materials, whether by translation, paraphrase, or abridgment, as to have practically elaborated a new work. Thus would he have placed the stamp of authorship upon the same, and have acquired a title thereto accordingly.

Copying general arrangement.

Where the arrangement or general plan has been copied, there may or may not be an infringement of the rights of the first compiler. The principle would seem to be this: that where the arrangement or general plan only is copied, the materials used being different, there is no infringement. Thus,

States." During the existence of copyright importation of copyrighted books is prohibited, provided nevertheless that in case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted.

(*a*) *MacMillan* v. *Shamsul* (1895), 19 Indian L. R. (Bombay Series), 557.

(*b*) See *post*, chapter on International Copyright: see *Lauri* v. *Renad* (1892). 3 Ch. 402; 8 T. L. R. 536.

in an American case (*a*) where the owner of a copyright of maps of certain wards of "the city of New York, surveyed under the direction of insurance companies of said city, which exhibit each lot and building and the classes as shown by the different colouring and characters set forth in the reference," brought a bill to restrain the publication of similar maps of the city of Philadelphia, it was held that the bill could not be sustained. But on the other hand, where the arrangement or general plan and also the materials (though they may be taken directly from the original sources) are copied, then the rights of the first compiler are infringed. The first compiler's rights consisted not in the materials, for they were common to all, and not in the arrangement apart from the materials, for in such copyright could not exist, but in the combined result of the common materials as selected and arranged; and if the arrangement and materials together were taken, then the second compilation would be substantially the same work, it would be practically identical (*b*).

Dramatizing copyright work.

The unauthorized dramatization of a work for public performance is not an infringement of the author's rights in that work, nor in a drama adapted from it made by the author himself after publication of the original work; but when the author's drama has preceded the publication of the novel, the latter cannot be dramatized without violating the author's rights in his play, except with his consent (*c*).

This subject is more fully dealt with under the head Dramatic Copyright.

Gratuitous distribution of copies an infringement of author's rights.

The gratuitous distribution of copies of a copyright work of another is an infringement. And an injunction will be granted to restrain the publication of lithographic copies of music intended for private use and not for sale or exportation. The members of the Liverpool Philharmonic Society, who perform gratuitously, made impressions of a musical composition called 'Benedict's part song, The Wreath,' and distributed them solely among themselves; this was held to be an infringement of the author's "sole and exclusive right and liberty of printing, or otherwise multiplying copies," of any subject to which the word "copyright" is applied (*d*).

(*a*) *Perris* v. *Hexamer*, 9 Otto's Rep. (Amer.) 674; *Moffatt & Paige* v. *Gill* (1902), 86 L. T. 465; 50 W. R. 528; 18 T. L. R. 547.

(*b*) *Godfrey* v. *Bradley & Co.*, Times, 23rd July, 1892, 'Mad Marriage' and 'Loyal.'

(*c*) *Reade* v. *Conquest* (1861), 9 C. B. (N.S.) 755; 11 Id. 479; *Toole* v. *Young* (1874), L. R. 9 Q. B. 523. See *Warne* v. *Seebohm* (1888), 39 Ch. D. 73.

(*d*) *Novello* v. *Ludlow* (1852), 12 C. B. 177; 21 L. J. (C.P.) 169; *Ager* v. *Peninsular & Oriental Steam Navigation Co.* (1884), 26 Ch. Div. 637; 53 L. J. (Ch.) 519; 50 L. T. 477; 32 W. R. 116.

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So in a case (*a*) to which we have already referred on another point, where the plaintiff published 'The Standard Telegram Code,' a book of words selected from eight languages, for use in telegraphic transmissions of messages, and it was accompanied by figure cyphers for reference or private interpretation, and the book was registered under the 5 & 6 Vict. c. 45, and a copy being purchased by the defendants they compiled for their own use with its aid a new and independent work as alleged which was their own private telegraph code, and they distributed copies of their book amongst their agents at home and abroad, but they had not printed their book for sale or exportation; it was held that the defendants had infringed the copyright of the plaintiff and a perpetual injunction was granted. It appeared that the defendants had distributed about sixty copies of their code among their own private establishments and agents. Mr. Justice Kay in his judgment, which is a clear exposition of the law on this subject, says, on the question of private distribution: "The justification attempted is the circumstance that they only give the books to their own agents and correspondents and do not publish or use them otherwise than privately; and they point to the word 'Private' printed conspicuously on the cover, and to the fact that their object would be defeated if their code were made public, as sufficiently showing that it is out of the question that they make any public use of the plaintiff's book.

"But copyright is the right, by printing or otherwise, to multiply copies. To multiply copies of a material portion of a work which is entitled to copyright is as much a breach of the law, though differing in degree, as to multiply copies of the whole work. And it has long been settled that multiplying copies for private distribution among a limited class of persons is just as illegal as if it were done for the purpose of sale. Take for example a valuable copyright like Lord Tennyson's poems. No one can print them and distribute the copies among his friends or among the boys at a school or any limited class of persons any more than he can print them for sale (*b*).

"Therefore, I have no hesitation in saying that the circumstance that the defendants do not sell their books, but only give them to their own agents and to merchants with whom they correspond, does not justify the multiplication of copies."

(*a*) *Ager* v. *Peninsular & Oriental Steam Navigation Co.*, *supra*; *Ager* v. *Collingridge* (1886), 2 T. L. R. 291.
(*b*) *Novello* v. *Ludlow* (1852), 12 C. B. 177.

The same view has been taken by the Scotch Court of Session in the case of a gratuitous circulation (*a*).

It is no defence to an action for infringement that the book said to have been pirated contains false statements, or that its author has in some incidental cases made such mistakes as might involve him in a penalty under the Copyright of Designs Acts, *e.g.*, by untruly describing designs and articles as "registered" or "patent" (*b*).

The point has been raised whether if the copying is not done direct from the work which is registered, but from a work not registered, but lawfully taken from such registered work, an infringement of work copyrighted is effected. There can be little doubt as to this, for otherwise a licence to use part for a limited object would be equivalent to a loss of copyright in that part. The point came before the court in *The Trade Auxiliary Company (Limited) and Others* v. *Jackson* (*c*), but was not then decided. In that case the plaintiffs were the registered proprietors of a trade periodical called *Stubbs' Weekly Gazette*. The plaintiff Perry was the registered proprietor of another weekly periodical called *Perry's Gazette*, and the plaintiff Cate was also the registered proprietor of a weekly periodical called *The Commercial Compendium*. The most important part of the information contained in these three periodicals consisted of lists of the Bills of Sale registered at the Bill of Sale Office, under the provisions of the Bills of Sale Acts and of County Court Judgments, the information being collected from the various public offices, and compiled by persons specially employed and paid by the plaintiffs for that purpose, and the necessary government fees for the extracts being paid by the plaintiffs. The plaintiffs' complaint was that the defendant was publishing a paper issued three times a week called *The County of Middlesex Independent*, into which they alleged that he copied these lists of Bills of Sale and Judgments directly from the lists compiled by the plaintiff. The defendant admitted having copied the lists in question into his paper, but said he had taken them not from the plaintiffs' periodicals, but from a newspaper called *Hepworth and Co.'s Trade Protection Circular;* that he had for several years been the correspondent of Messrs. Hepworth and Co., and had under a special arrangement with them, furnished them with information as to trade matter connected with his own neighbourhood in exchange, for

(*a*) *Alexander* v. *Mackenzie* (1847), 9 Sc. Sess. Cas. 2nd Ser. 748.
(*b*) *Macfarlane* v. *Oak Foundry Co.*, 10 C. of S. Cas. (Sc.) 801.
(*c*) (1887), 4 T. L. R. 130; *Hanfstaengl* v. *Newnes* (1894), 3 Ch. 109.

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which information they had been in the habit of supplying him with copies of their circular, from which he took extracts for his own papers. It appeared that Hepworth and Co.'s circular was a reprint with the substitution of a fresh title-page of *The Commercial Compendium*, Messrs. Hepworth having purchased the right of publication from the plaintiff Cate; that they had not registered the circular as copyright. Mr. Justice Kay, in refusing an interim injunction, said, the question was whether the defendant, in copying from what had been sent to him, was infringing the plaintiffs' copyright. It was said that the plaintiffs had copyright entitling them to prevent persons from publishing that composition in which they had a copyright, but people could not copy or multiply copies from Hepworth and Co.'s publication, even if there was no copyright in it, because that would be an infringement of the original copyright. That was an important question which must receive careful consideration when the action came on for trial, but it was not a question which his lordship could decide off-hand. But in the subsequent case of *Cate* v. *The Devon and Exeter Constitutional Newspaper* (*a*), North, J., granted an injunction.

Infringement by importation.

Copyright may also be infringed by the importation for sale or hire into any part of the British dominions of copies printed abroad.

The 17th section of the Copyright Act provides that after the passing of the Act it shall not be lawful for any person not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions (*b*), for sale or hire, any printed book first composed or written or printed and published in any part of the United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book into any part of the British dominions, contrary to the true intent and meaning of the Act, or shall knowingly sell, publish, or expose to sale, or let to hire, or have in his possession for sale or hire any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer: and every person so offending, being duly

(*a*) (1889), 40 Ch. D. 500. See as to this case, *post*, Chapter "Newspapers."
(*b*) But see Foreign Reprints Act, 1847 (10 & 11 Vict. c. 95), *post*, Colonial Copyright.

convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of the Act, five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book (*a*).

Offence committed though no copy sold or let out on hire.

It is under this section an offence to import copyright matter for sale or hire, and the defendant who has imported such matter must pay the costs of an action, even if he has not done so knowingly, and though he may not have sold or let out on hire a single copy (*b*).

In Scotland it was held by Lord Gifford (*c*), that where a bookseller had sold copies of a copyright work which had been pirated and printed in America, an action of damages lay against him at the instance of the proprietors of the copyright in this country, though no such remedy is prescribed in sect. 17 of the Copyright Amendment Act, his Lordship being of opinion that copyright is not the mere creature of a statute, but a natural and civil right, entitled to protection at common law.

The pursuer, Lord Tennyson, who was the proprietor of the copyright of the whole of his poetical works, had conveyed to the other pursuers, A. Strahan and Co., publishers, London and Edinburgh, the exclusive right to print and publish his poetical works within the British dominions for five years, from and after 1st January, 1869. Messrs. S. and Co. alleged that defender, who is a bookseller at Glasgow, sold, published, exposed for sale, or had in his possession for sale, reprints of Tennyson's works printed or published in the United States of America, and that within the period referred to and without their consent. They accordingly raised a suspension and interdict against defender, and on 20th April, 1870, that interdict

(*a*) This section would exclude books reprinted out of the British dominions only, and not books reprinted in a colony; but see the 39 & 40 Vict. c. 36, s. 42, *post*. The owner of the British international copyright of a book first published in Germany succeeded, by virtue of this section, in preventing the importation for sale in Great Britain of copies of the same book printed in Germany by the owner of the German copyright. *Pitt Pitts* v. *George & Co.* (1896), 2 Ch. 866.

(*b*) *Cooper* v. *Whittingham* (1880), 28 W. R. 720; 15 Ch. D. 501.

(*c*) *Tennyson* v. *Forrester*, 43 Scottish Jurist, 278.

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was declared perpetual. Messrs. Strahan and Co. then raised the present action for damages averred by them to have been incurred in consequence of the sale of said copies. Damages laid at £500.

The Lord Ordinary refused to give effect to the defender's argument for the following reason: He thought that the right of copyright, although protected and favoured, and regulated by statute, was not the mere creature of statute, and that offences against copyright were not to be viewed as mere statutory offences for which the statutory remedy or punishment was alone applicable. On the contrary, he thought that the right of the author and his assigns in his work was a natural and civil right which the statute had defined and protected but had not created, and infringements of copyright were violations of this civil right and not mere statute-made offences.

By Customs Act copies of books protected may not be imported.

The 42nd section of the 39 & 40 Vict. c. 36 (The Customs Consolidation Act, 1876) gives a list of "goods, &c., absolutely prohibited to be imported, and which shall be forfeited, and shall be destroyed or otherwise disposed of as the Commissioners of Customs may direct." In this list will be found enumerated "Books wherein the copyright shall be first subsisting, first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing that such copyright subsists, such notice also stating when such copyright will expire."

This section is much wider than the corresponding section in the 5 & 6 Vict. c. 45; it not only does away with the limitation of the restriction to books printed for sale or hire, but it prohibits books printed or reprinted in any other country.

The Copyright Act, 5 & 6 Vict. c. 45, especially prohibits books reprinted out of the British dominions; the Customs Act especially prohibits books reprinted in any other country. It is by no means clear whether in the latter Act the words "any other country" mean and include the colonies.

The Commissioners of Customs are to have printed lists of all such books in respect of which they shall have received such notices, and to expose the same at the several ports in the United Kingdom and in the British possessions abroad (*a*).

(*a*) According to the 'Publishers Circular' for 26th July, 1902, these lists are in a chaotic state, rendering the task of Customs officers difficult if not impossible. In

In the lists so to be printed and posted up a statement is to appear as to when the copyright will expire.

Importation into colonies prohibited.

By the 152nd section of the same Act any book wherein the copyright may be subsisting, first composed, or written or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad. But it is provided that no such books shall be prohibited to be imported as aforesaid unless the proprietor of such copyright or his agent shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire. And it is further provided that the Commissioners shall cause to be made and to be publicly exposed at the several ports in the British possessions abroad, from time to time, printed lists of books respecting which such notice shall have been duly given, and all books imported contrary thereto shall be forfeited; but nothing contained in the Act shall be taken to prevent the Crown from exercising the powers vested in it by the 10 & 11 Vict. c. 95, intituled "An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom," to suspend in certain cases such prohibition.

This section, standing by itself, no doubt extends to all British colonies and possessions, but section 151 provides that the Customs Acts (which by the interpretation clause, section 284, means and includes that and all or any other Acts or Act relating to the Customs) shall not extend to "any such possession as shall by local Act or ordinance have provided, or may hereafter, with the sanction and approbation of Her Majesty and her successors, make entire provision for the management and regulation of the Customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act for the purposes of such possession." It has recently been held in Canada that in consequence of this provision, the Customs Consolidation Act of 1876 is not in force in that colony (*a*).

Notice of copyright to be given to the Customs.

In the case last cited the proprietors of the copyright in the 9th edition of the 'Encyclopædia Britannica' brought an action to restrain alleged infringements of the copyright in Canada by the importation and sale of an edition printed in

1894 a general list was published which had been continued since in 117 supplements!

(*a*) *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

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the United States. The defendants urged that the plaintiffs could not succeed because they had not given a proper notice to the Commissioners of Customs under the Customs Consolidation Act of 1876, section 152, the wrong date of expiry of copyright having been stated. Mr. Justice Street, however, held that that section was not in force in Canada, and that the plaintiffs, therefore, were entitled to succeed by virtue of section 17 of the Copyright Act, 1842. He was, however, of opinion that the defendant's objection would have been fatal to the plaintiffs, if Canada had not possessed complete Customs legislation of her own. "If that Act (the Customs Act, 1876)," he said, "were in force in Canada, I think it would be an answer to the plaintiff's claim in this action, because under section 152 of it, it is expressly declared that foreign reprints of books entitled to British copyright are not prohibited from being imported into the British possessions unless notice has been given to the Commissioners of Customs of the existence of the copyright and the date when it will expire. . . . An erroneous statement of the date of the expiration of the copyright in the notice is clearly not a compliance with the condition imposed by section 152 of the Customs Act, and therefore, as I have said, if that Act were in force in Canada, the objection would, it seems to me, be fatal to the plaintiff's right to recover: because section 152 being an enactment *in pari materiâ* with section 17 of the Copyright Act of 1842, must be read in connection with it, and as an essential part of the legislation upon the subject."

On the assumption that the above opinion is correct, no doubt owners of copyright will be well advised if they give the requisite notices to the Customs authorities in the United Kingdom (*a*). It is submitted, however, that the true construction of the Customs Act is that failure to give

(*a*) See Scrutton, 4th Ed. p. 213. The notice may be in the following form :—
To the Honourable the Commissioners of His Majesty's Customs.

the undersigned of being the Proprietor of a certain Book intituled do hereby give you notice that the Copyright in such Book now subsists in [or is partly vested in] and that such Copyright will expire on the of 18 , if [*the author*] of the above-mentioned work shall then have been dead for seven years, but if the author shall not have been dead for seven years at that date the Copyright aforesaid will expire at the expiration of Seven years next after the author's death [or, in the case of joint authors, that of the survivor].

And claim that such Copyright may be protected pursuant to the Act. 39 & 40 Vict. chap. 36, or other Acts referring to Copyright.*

Signed in London this day of 18 , by of the firm of & Co.

* If the copyright has been previously registered insert here the following words :—"Notice has already been given that the Copyright in this work is subsisting in and request that the existing entry in the official List may be cancelled."

notice only deprives the owner of the copyright of one of his remedies, viz., seizure by the Customs officials, but that it does not deprive him of his right to damages or an injunction.

Rectification of Customs lists.

The 45th section of the Act gives leave to any person complaining of the insertion of any books in the lists required by the above sections, to apply to any judge at chambers for a summons calling upon the person upon whose notice such book shall have been so inserted, to appear before such judge to show cause why such book shall not be expunged from such list, and such judge is at the time appointed in the summons to hear and determine upon the matter and make his order thereon in writing: And it is provided that upon service of such order or a certified copy upon the Commissioners of Customs or their secretary, the said Commissioners shall expunge such book from the list, or retain the same therein, according to the tenor of such order.

It is further provided that if at the time appointed in any such summons the person summoned shall not appear before such judge, then upon proof by affidavit that such summons or a true copy thereof has been personally served upon or left at the last known or usual place of abode of the person so summoned, or in case the person to whom such summons was directed and his place of abode cannot be found, that due diligence has been used to ascertain the same, such judge shall be at liberty to proceed *ex parte* to hear and determine the matter.

In the event of either party being dissatisfied with the order of the judge, he may apply to the superior court of which such judge is a member to revise such order and make such further order thereon as such court may see fit.

Mr. is authorised by to attend to the above notice and to complete the declaration of the same.

(*Signed*)

I , of , do solemnly and sincerely declare that the contents of the above Notice are correct, and I make this solemn declaration conscientiously believing the same to be true and by virtue and in pursuance of the "Statutory Declaration Act, 1835," and the "Customs Consolidation Act, 1876."

Declared by the above-named, }
this day of 18 , before me. }

CHAPTER VII.

REMEDY IN CASES OF INFRINGEMENT OF COPYRIGHT.

Various remedies.

THE remedies for infringement of copyright are either legal or equitable, but, inasmuch as, since the Judicature Act, 1873, the plaintiff can pursue his remedies in either the Chancery or King's Bench Division of the High Court of Justice (*a*), it seems more convenient to consider those remedies together.

A plaintiff whose copyright has been infringed can obtain the following relief:

1. Damages.
2. Recovery of pirated copies.
3. An injunction restraining future infringements; and
4. An account of profits.

Penalties for importation of piracies.

Of these remedies the first two are legal and the last two equitable. In addition, the proprietor of the copyright can, under section 17 of the Act of 1842 and section 42 of the Customs Consolidation Act, 1876, have pirated copies imported into the United Kingdom seized and destroyed by the Customs officials, provided he has given notice to the Commissioners of Customs of his copyright. This right of the copyright proprietor has already been discussed (*b*). By the same section any person, not being the proprietor of the copyright or authorized by him, who imports or brings, or causes to be imported or brought, for sale or hire, any piracy into the British dominions, or shall knowingly sell, publish, or expose for sale or let to hire, or have in his possession for sale or hire, any such piracy shall, on conviction, forfeit the sum of £10 and double the value of every such piracy so unlawfully imported, sold, published, or exposed for sale or let to hire; £5 to the use of the officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright. It will be noticed that whilst the importer cannot, the publisher or seller can, under this section, successfully plead that he had no knowledge that the imported work was an infringement of copyright (*c*).

(*a*) See *Muddock* v. *Blackwood* (1898), 1 Ch. 58; 67 L. J. Ch. 6; 77 L. T. 493; 46 W. R. 166.

(*b*) See *ante* p. 196.

(*c*) *Colburn* v. *Simms* (1842), 2 Hare 543, 557; *Leader* v. *Strange* (1849), 2

1st. As to damages:—

1. Damages.

By the 15th section of the Act, it is provided, that if any person in any part of the British dominions shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor, or import for sale or hire any such book unlawfully printed from parts beyond the sea, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale or hire, or cause to be sold, published, or exposed for sale or hire, or shall have in his possession for sale or hire, any such book without the consent of the proprietor, such offender shall be liable to a special action on the case, at the suit of the proprietor of the copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the Court of Session, there to be brought and prosecuted in the same manner as any other action of damages to the like amount.

Damages for gratuitous distribution.

By this section the printer is made liable for damages only when the printing is for "sale or exportation," and the importer only when copies are imported for "sale or hire." No remedy is given against any person who prints or imports for gratuitous distribution, or who gratuitously distributes copies printed or imported without authority. But in *Novello* v. *Ludlow* (*a*), it was held that an action for damages would lie under the statute for the gratuitous distribution among the members of a singing society of lithographic copies of a musical composition (*b*); for where a statutory right exists and the statutory remedies are either not complete or inadequate for the protection of the right conferred, the common law remedies may be made available.

Persons liable.

The persons who are liable in damages are: (a) the person who prints, or causes to be printed, pirated copies; (b) the importer; (c) the publisher; and (d) the person who sells, exposes for sale or hire, or causes to be sold or exposed for sale or hire, or has in his possession for sale or hire. As to (c) and (d) they can raise the defence that they have not intentionally violated the copyright of another, but no such defence is available to either (a) or (b). Where printers know that what they

Car. & Kir. 1010; *Green* v. *Irish Independent* (1899), 1 Ir. Rep. 386; *Kelly's Directories* v. *Gavin & Lloyds* (1902), 1 Ch. 631.

(*a*) (1852), 12 C. B. 177.

(*b*) See also *Rooney* v. *Kelly* (1861), 14 Ir. L. R. (N.S.) 158; *Warne* v. *Seebohm* (1888), 39 Ch. D. 73; *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

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are printing is a piracy, and the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors jointly with the persons for whom such copies are printed, and are jointly liable in damages to the persons whose copyright is infringed (*a*).

"Cause" to be printed.

The case of *Kelly's Directories, Ltd.*, v. *Gavin & Lloyds* (*b*) is a decision as to the meaning of the expression "cause" to be printed in section 15. The defendant Gavin published a book which was an infringement of the plaintiffs' copyright. The defendants Lloyd had agreed to print the book for Gavin, but in order to save time, at Gavin's request, they subsequently relinquished their contract as to part of the work, and Gavin employed other printers to print the pirated portion. When the book was published it bore on the title page the statement "Printed at Lloyd's," but Lloyds were ignorant of the piracy until they were informed of it after the publication. The Court were satisfied by the evidence that Gavin and Lloyds were not partners or co-adventurers in the publication of the book, and that the printers who printed the pirated matter were agents of Gavin and not of Lloyds, and held that Lloyds had not "caused" it to be printed within the meaning of the above section, and consequently were not liable (*c*).

Measure of damages.

The measure of damages under this section is, semble, the loss which the proprietor of the copyright has suffered in the diminution of the sales of his book.

Recovery of pirated copies.

2ndly. As to recovery of pirated copies:—

This right is given by virtue of section 23, which is in the following terms:—"All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the same in an action of trover."

It has been contended that the remedy given by this section

(*a*) *Lamb* v. *Evans* (No. 2), W. N. (1895), p. 156.
(*b*) (1901), 1 Ch. 374; 70 L. J Ch. 237; 84 L. T. 581; 49 W. R. 313; (1902), 1 Ch. 631; 71 L. J. Ch. 405; 86 L. T. 393; 50 W. R. 385.
(*c*) See also *Green* v. *Irish Independent* (1899), 1 Ir. Rep. 386; *Colburn* v. *Simms* (1843), 2 Ha. 543, 547; *Leader* v. *Strange* (1849), 2 Car. & Kir. 1010.

is confined to the case of a person who is the innocent possessor of a pirated book, and that section 15 is the section directed against the actual committer of the piracy. This contention was, however, rejected by Mr. Justice Kekewich in *Muddock* v. *Blackwood* (*a*), where he held that the proprietor of the copyright might sue the offender under either section. It was also held, in the same case, that the proprietor could recover both in detinue for the copies remaining in the infringer's hands, and in trover for those which had been converted, and that the plaintiff could pursue his remedies under both sections by action in the Chancery Division.

Measure of damages.

Under this section the measure of damages has been stated to be that "the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's, and to pay the plaintiff the profit which he would have received from the sale of so many additional copies" (*b*). In *Muddock* v. *Blackwood* (*c*) the defendant sold twice. On the first occasion he sold 1010 copies at a total price of £38 19*s.* 9*d.* and at a profit of £8 10*s.* 4*d.*; on the second occasion he sold twenty-nine copies at a profit of £1 4*s.* 2*d.* Mr. Justice Kekewich assessed the damages at forty guineas.

Common law right to pirated copies.

There is no common law right in the author or proprietor of a book which is pirated to the delivery up for his own benefit of the copies of the illegal work: and therefore, in a case under the 54 Geo. III. c. 156, s. 4, it was held that the proprietor of a book who was entitled to an injunction to restrain the printing and sale of the unlawful work, nevertheless was not entitled to an order for the delivery up of the illegal copies, if the book, the copyright of which had been infringed, was not composed and entered according to the statutes in force at the time the illegal copies were printed (*d*). But there is a common law right to the delivery up of infringing copies for destruction (*e*). In *Hole* v. *Bradbury* (*f*) Mr. Justice Fry held that a proprietor of copyright could not, under section 23, recover for his own benefit infringing copies unless he were registered, not only before bringing his action,

(*a*) (1898), 1 Ch. 58; 67 L. J. Ch. 6; 77 L. T. 493; 46 W. R. 166.

(*b*) *Per* James, V.-C., *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 260; 38 L. J. (Ch.) 529; 20 L. T. 906. In *Delfe* v. *Delamotte* (1857), 3 K. & J. 581, it was held that *in equity* there could be only an account of profits, and that if a plaintiff wanted more he must go to law. Cf. *Colburn* v. *Simms* (1843), 2 Ha. 554.

(*c*) *Ubi sup.*

(*d*) *Colburn* v. *Simms* (1843), 2 Ha. 543; 12 L. J. Ch. 388; and see *Delfe* v. *Delamotte* (1857), 3 K. & J. 581.

(*e*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73, 82; cf. *McRae* v. *Holdsworth* (1848), 2 Dr. G. & Sm. 496, a case under the Designs Act, 1842.

(*f*) *Supra.*

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but at the time when the infringements were printed; but this case has not been followed on this point (*a*).

Where only a portion is piratical.

Where only a portion of a book is piratical, nevertheless the plaintiff is entitled to delivery of the whole (*b*), unless the piratical portion can be conveniently separated from the original portion (*c*). The general principle was thus stated by Lord Eldon in a case where the question was whether an injunction should be granted against the whole or only a portion of a piratical work: "If the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame" (*d*).

Injunction.

3rdly. As to remedy by injunction:—

An injunction is the most usual and expeditious means of obtaining redress from piracy, and for preventing the continuance of the injury. "*Melius est in tempore occurrere, quam post causam vulneratam remedium quærere*" (*e*). By this means the property in question may be protected from, perhaps, irreparable damage pending the trial of the right; and the wrong is not permitted to continue until the final decision of the court, at which time, frequently, from the circumstances of the case, the mischief may be irremediable (*f*).

Where formerly the question of legal injury was referred to a court of law under the sanction of a court of equity, an

(*a*) *Isaacs* v. *Fiddeman* (1880), 49 L. J. Ch. 412; 42 L. T. 395; *Boosey* v. *Whight* (No. 2) (1899), 81 L. T. 265.

(*b*) *Boosey* v. *Whight* (No. 2) *ubi sup.*

(*c*) *Warne & Co.* v. *Seebohm*, *ubi sup.*; *Leslie* v. *Young* (1894), A. C. 335.

(*d*) *Mawman* v. *Tegg* (1826), 2 Russ. 385, 391; 26 R. R. 112. So, again, in *Stevens* v. *Wildy* (1850), 19 L. J. (Ch.) 190, the Vice-Chancellor said: "I apprehend the law at present is in conformity with the old Roman Law, which is, that if the defendant will take the plaintiff's corn and mix it with his own, the whole should be taken to be the plaintiff's." *Cary* v. *Longman* (1801), 1 East 360; *Trusler* v. *Murray*, 1 East 363.

(*e*) 2 Inst. 299.

(*f*) *Vide* 2 Story, Eq. Jur. 926; 1 Fonbl. Eq. 34, *notis*; Kerr on Injunc. (4th ed.) 275; *Saunders* v. *Smith* (1838), 3 My. & Cr. 728; *Platt* v. *Button* (1813), 19 Ves. 447.

injunction was granted to restrain the evil complained of until the merits of the case could be finally heard, when, if the opinion of the court of law were in favour of the plaintiff, it granted its final preventive relief, which, by way of distinction from the temporary process just mentioned, was termed a perpetual injunction.

Since the Judicature Act, 1873, law and equity have been fused and a court of equity has jurisdiction to try a legal right, and, on the other hand, courts of law can grant injunctions. A court of equity, therefore, no longer sends a case of infringement of copyright to be tried in a court of law, but determines the matters in issue itself. The distinction between a temporary injunction and a perpetual injunction, nevertheless, remains, the courts constantly granting a temporary, or interlocutory, injunction until the trial of the action or further order. An interlocutory injunction can be obtained, on motion to the court, in a speedy manner, and is granted upon evidence by affidavit; whereas, if the case goes to trial, evidence, except by consent, is taken *viva voce*. The granting of an interlocutory injunction is founded upon the necessity of protecting the plaintiff's property from damage pending the trial of the action (*a*); the granting of a perpetual injunction, upon the ground of relieving the plaintiff from a multiplicity of actions (*b*).

Definition of an injunction.

An injunction may be described as a prohibitory writ, restraining the defendant from using some right, the exercise of which would be contrary to equity and good conscience; or from doing some act inconsistent with the admitted or probable legal rights of the complainant, and with the due preservation of the property affected by the act sought to be restrained (*c*).

Where interlocutory injunction granted, and on what evidence.

An interlocutory injunction will be granted in all cases where there is a clear colour of title founded upon long possession and assertion of right (*d*). Lord Eldon distinctly

(*a*) Kerr on Injunc., p. 275. (*b*) *Ibid.* p. 23.

(*c*) Drewry on Injunc. Intro. 5. At one time, courts of equity would not interfere by way of injunction to protect copyrights any more than patent rights, until the title had been established at law. 2 Story Eq. Jur. Chap. 23, s. 935; *Hill* v. *University of Oxford* (1684), 1 Vern. 275; *Baskett* v. *Cunningham* (1762), 2 Eden. 137; *East India Co.* v. *Sandys* (1682), 1 Vern. 127; *Jefferys* v. *Baldwin* (1753), Amb. 164; *Blanchard* v. *Hill* (1740), 2 Atk. 485. See *Redfield* v. *Myddleton*, 7 Bosw. (Amer.) 649. There was considerable controversy as to the value to be attached to the decisions of the old Courts of Chancery on the subject of copyright. See *Millar* v. *Taylor* (1769), 4 Burr. 2303; *Miller* v. *Donaldson* (1762), 2 Eden. 327; *Bruce* v. *Bruce* cited 13 Ves. 505; *Harmer* v. *Plane* (1807), 14 Ves. 130; *Hogg* v. *Kirby* (1803), 8 Ves. 215, 224; *Gurney* v. *Longman* (1806), 13 Ves. 493, 505; Evan's 'Statutes,' vol. ii., p. 26.

(*d*) *Universities of Oxford and Cambridge* v. *Richardson* (1802), 6 Ves. 689;

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lays down this doctrine, he says (*a*): "It is said in cases of this sort the universal rule is, that if the title is not clear at law, the court will not grant or sustain an injunction until it is made clear at law. With all deference to Lord Mansfield, I cannot concede to that proposition so unqualified. There are many instances in my own memory in which this court has granted or continued an injunction to the hearing under such circumstances. In the case of patent rights, if the party gets his patent, and puts his invention in execution, and has proceeded to a sale, that may be called possession under it, however doubtful it may be whether the patent can be sustained. This court has lately said, possession under a colour of title is ground enough to enjoin and to continue the injunction until it shall be proved at law that it is only colour, and not real title." An injunction *pendente lite* should not be granted on light grounds, nor in doubtful cases, but should await the full proof upon the final hearing (*b*). Even an equitable interest limited in point of time or extent is sufficient (*c*). An equitable title, which will support an application for an injunction, occurs where the legal right has not been vested, but from the dealings between the actual owner and the party applying for the injunction such party has acquired a limited equitable right in the copyright, to the extent of being entitled to be one of the publishers, or the sole publisher of the work, for a given or an indefinite time.

Equitable title will support injunction.

"This court," said the Vice-Chancellor of England in *Bohn* v. *Bogue* (*d*), "always takes notice of the equitable interest: and if the equitable right to the copyright is complete, this court will take care that the real question shall be tried, notwithstanding there may be a defect in respect of the legal property." As to what amounts to an equitable interest sufficient to maintain an action, must depend upon circumstances, but it is clear that where there is no material interest in the work for which protection is claimed, no action can be maintained. An injunction will not be granted until the work has been registered, but the court will interfere by injunction to protect the copyright of the assignee of the author, though it appear

Hawman v. *Tegg* (1826), 2 Russ. 385, 391; *Sheriff* v. *Coates* (1830), 1 Russ. & My. 159, 167; *Shaw* v. *Shaw* (1839), 3 Jur. 217; *Colburn* v. *Duncombe* (1838), 9 Sim. 151; *Chappell* v. *Purday* (1845), 4 Y. & C. 485; *Bohn* v. *Bogue* (1847), 10 Jur. 420; *Tonson* v. *Walker* (1752), 3 Swanst. 679; Jeremy on Eq. Jur. bk. 3, ch. 2. s. 1; Eden on Injun. ch. 13, p. 284; Story on Eq. s. 935.

(*a*) *Universities of Oxford and Cambridge* v. *Richardson* (1802), 6 Ves. 707.

(*b*) *Redfield* v. *Myddleton*, 7 Bosw. (Amer.) 649. See principle in Patent Actions. *The British Tanning Co.* v. *Groth* (1890), 7 Rep. Pat. Cas. 1.

(*c*) *Sweet* v. *Cater* (1840), 11 Sim. 572; *Chappell* v. *Purday* (1845), 4 Y. & C. 485; *Sims* v. *Marryat* (1851), 17 Q. B. 281.

(*d*) (1847), 10 Jur. 421.

that at the time of the alleged piracy there was not an assignment in writing (*a*). But a mere agent to sell has not such a real interest in a work as will entitle him to relief (*b*). Nor will the court interfere where a *primâ facie* title is not shown, as in *Platt* v. *Button* (*c*), where the plaintiff claimed protection for the music of certain dances which he had permitted several persons to publish. Where the plaintiff states circumstances showing a good equitable title, the court has, for the purpose of determining the fact of piracy, ordered the defendant to admit the legal title of the plaintiff (*d*). Judge Story remarks: "In some cases a court of equity will take upon itself the task of inspection and comparison of books alleged to be piracies; but the usual practice is, to refer the subject to a master, who then reports whether the books differ, and in what respects; and upon such a report the court usually acts in making its interlocutory, as well as its final decree" (*e*). And Mr. Curtis, on the same head, says: "In general, if the court sees strong ground for supposing that the defendant's work is a violation of the plaintiff's copyright, the course is to grant an injunction *ex parte*, until answer or further order. Then, in order to ascertain the fact of piracy or no piracy, it is referred to a master to examine into the originality of the new book, or the court takes upon itself the inspection of both works. Where the works are long and of a complex character, containing original matter mixed with much that is common property, they will be referred to a master; but where they are of a class affording facility for the detection of piracy by immediate inspection, the court will examine them" (*f*). At the present day the court usually takes upon itself the inspection of the book (*g*).

Primâ facie title must be shown.

In all cases of interlocutory injunctions in aid of legal rights, whether it be copyright, patent right, or some other description of legal right which comes before the court, the office of the court is consequent upon the legal right; and it generally

Injunction auxiliary to legal right.

(*a*) *Hodges* v. *Welsh* (1840), 2 Ir. Eq. 266.

(*b*) *Nicol* v. *Stockdale* (1820), 3 Swans. 687; *Petty* v. *Taylor* (1897), 1 Ch. 465.

(*c*) (1813), 19 Ves. 447.

(*d*) *Sweet* v. *Cater* (1841), 11 Sim. 572; *Dickens* v. *Lee* (1844), 8 Jur. 183; *Bohn* v. *Bogue* (1847), 10 Jur. 421; *Sweet* v. *Shaw* (1839), 8 L. J. Ch. 216; Kerr on Injunc. 23.

(*e*) 2 Story, Eq. Jur. 124, s. 941; Eden on Injunc. chap. 13, 289; *Carnan* v. *Bowles* (1786), 2 Bro. C. C. 80; —— v. *Leadbetter* (1799), 4 Ves. 681: *Cary* v. *Faden* (1799), 5 Ves. 24; *Jeffery* v. *Bowles* (1770), 1 Dick. 429; *Trusler* v. *Lumyns*, cited Id.

(*f*) Curtis on Copy 325; *Sheriff* v. *Coates* (1831), 1 Russ. & My. 164.

(*g*) *Murray* v. *Bogue* (1852), 1 Drew. 368; *Spiers* v. *Brown* (1858), 6 W. R. 352; *Jarrold* v. *Houlston* (1857), 3 K. & J. 708: *Hotten* v. *Arthur* (1868), 1 H. & M. 603; *Pike* v. *Nicholas* (1870), 38 L. J. (Ch.) 529; L. R. 5 Ch. Ap. 251; *Chatterton* v. *Cave* (1878), 3 App. Cas. 483.

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happens, that the only question the court has to consider is, whether the case is so clear and so free from objection upon the grounds of equitable consideration, that the court ought to interfere by injunction before trial, or whether it ought to wait till the legal title has been established at the hearing. This distinction depends upon a great variety of circumstances, and it is utterly impossible to lay down any general rule upon the subject, by which the discretion of the court ought in all cases to be regulated (*a*).

The court will exercise its discretion in following that course which appears to be most conducive to justice to both parties. Although the matter may not be wholly free from doubt, yet if the plaintiff makes out a *primâ facie* case, and the court is reasonably satisfied that a piracy has been committed, a temporary injunction will usually be granted.

In what cases it will be granted.

If irreparable damage would be caused to the property of the plaintiff by the refusal of the court to interfere, the injunction will be immediately granted (*b*). If, however, an injunction would cause a severer injury to the defendant than that occasioned the plaintiff by reason of his being required, in the first instance, to establish his legal right, the other alternative will be adopted (*c*), and the court is disposed rather to restrict than increase the number of cases in which it interferes by injunction before the establishment of the legal title (*d*), and it will give great weight to the consideration of the questions, which side is more likely to suffer by an erroneous or hasty judgment, and the prejudicial effect the injunction may have on the trial of the action (*e*). In a case (*f*), where the defendant was a vendor of a literary work published in weekly numbers, in one of the numbers of which was contained the commencement of a work of fiction, which, with the exception of a few

(*a*) *Per* Lord Cottenham, in *Saunders* v. *Smith* (1838), 3 My & Cr. 728.

(*b*) *Sweet* v. *Shaw*, 8 L. J. Ch. (1839), 216; *Dickens* v. *Lee* (1844), 8 Jur. 183.

(*c*) *Saunders* v. *Smith*, *supra*; *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737; *Spottiswoode* v. *Clarke* (1846), 2 Ph. 154, 157; *M'Neil* v. *Williams* (1840), 11 Jur. 344; *Smith* v *Chatto* (1874), 31 L. T. 775. "No doubt," said Hall, V.-C., in this last case, "this question might be left to be decided at the hearing, but I think it better to decide it at once, particularly considering how difficult it would otherwise be to assess the plaintiff's damages, if he should ultimately prove to be in the right. But in granting the injunction for which the plaintiff asks I do not lose sight of the fact that compensation may have to be made to the defendants, if at the hearing I decide in their favour. The amount of such compensation can, however, be more easily fixed than if it had to be made to the plaintiff, and if given will have to be substantial. . . . The plaintiff must undertake to abide by such damages, if any, as the Court may at the hearing think fit to award."

(*d*) See *Bacon* v. *Jones* (1829), 4 My. & Cr. 433; *Merens* v. *Keating* (1850), 1 Mac. & G. 659; *Norton* v. *Nicholls* (1857), 6 W. R. 764.

(*e*) *M'Neil* v. *Williams* (1840), 11 Jur. 344.

(*f*) *Dickens* v. *Lee* (1844), 8 Jur. 183; see also *Ingram* v. *Stiff* (1859), 5 Jur. 947; 33 L. T. 195.

colourable alterations, was in all respects similar to a prior work of which the plaintiff was the author and publisher; on a bill by the plaintiff, praying that the defendant might be restrained from publishing, selling, or otherwise disposing of the number containing the commencement of such work of fiction, or any continuation or other part thereof, and from copying, "or imitating," the whole or any part of the plaintiff's book, the court granted an injunction as prayed, except as to the words "or imitating," but directed the plaintiff to bring an action within ten days against the defendant for the invasion of his alleged copyright.

Where the publication is of a temporary character.

If the work be of such a character that the sale is temporary, the Court of Chancery is more cautious, inasmuch as an interlocutory injunction in such a case may be of equal effect with a perpetual injunction (*a*).

In refusing to restrain in December the sale of an almanac for the ensuing year, in a case where the rights of the parties were doubtful, Lord Cottenham said: "But the greatest of all objections is that the court runs the risk of doing the greatest injustice in case its opinion upon the legal right should turn out to be erroneous. Here is a publication, which, if not issued this month, will lose the greater part of its sale for the ensuing year. If you restrain the party from selling immediately, you probably make it impossible for him to sell at all. You take property out of his pocket, and give it to nobody. In such a case, if the plaintiff is right the court has some means at least of indemnifying him, by making the defendant keep an account; whereas, if the defendant be right, and he be restrained, it is utterly impossible to give him compensation for the loss he will have sustained. And the effect of the order in that event will be to commit a great and irremediable injury. Unless, therefore, the court is quite clear as to what are the legal rights of the parties, it is much the safest course to abstain from exercising its jurisdiction, till the legal right has been determined" (*b*).

Yet in some cases the ephemeral character of the work in question may be an additional reason for an interlocutory injunction being granted, especially when the publication complained of is sold, or intended to be sold, at a lower price than the original work from which it has been taken. It is obvious that in some such cases the remedies after sale of the plaintiff

(*a*) See *Gurney* v. *Longman* (1806), 13 Ves. 493; *Spottiswoode* v. *Clarke* (1846). 2 Phillips, 154; Curtis on Copyright, 317.
(*b*) *Spottiswoode* v *Clarke* (1846). 2 Phillips, 157.

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might be practically worthless. The principle was recognised by Lord Eldon in a case relating to an East India Calendar or Directory.

He considered there was a great difference between works of a permanent and of transitory nature. The case upon the former might be brought to a hearing, but the effect was very different upon a work of a perishable kind—a work that would be good for nothing in a year's time. "I am bound," said he, "under these circumstances to continue this injunction to the hearing; for the defendant would merely have to account at the rate of 2*s.* 6*d.* for each book: and if his publication proceeds at that reduced price, it will be impossible for the plaintiffs, obliged by the expense they have been at to charge a much higher price, to sell another copy" (*a*).

Methods adopted by the Court in particular instances.

If the court is satisfied that the alleged title is good, and that there has been a piracy, it may interfere at once and restrain the piracy simpliciter by injunction; but if the title is not clear, or the fact of violation is denied, the course the court usually adopts is either to grant an injunction pending trial of the legal right, with an undertaking by the plaintiff as to damages (*b*), or to direct the motion to stand over till the hearing, on the terms of the defendant keeping an account of the number of copies sold, in order that justice may ultimately be done between the parties (*c*).

If the plaintiff establishes his legal right at the hearing, he will generally be entitled to an injunction restraining future infringements of his copyright, but in some exceptional cases it will be refused.

Injunction refused in cases of a certain description.

For instance, the subject of his title may be such that, for reasons of morality or public policy, no action at law could be maintained upon it (*d*). The doctrine of equity in reference to works of such a nature is, that if an author can maintain an action he may, at least with some exceptions, come into equity to have his remedy made more effectual. But if the action could not be maintained in the former court, nothing can be

(*a*) *Matthewson* v. *Stockdale* (1806), 12 Ves. 277; see *Johnson* v. *Egan*, Sol. J. 29th May, 1880.

(*b*) An undertaking as to damages was, formerly, only required in *ex parte* cases, but is now usual in all cases where an interlocutory injunction is granted. Kerr. Injunc. (4th ed.) p. 23. As to the damages where the interlocutory injunction is dissolved, see *Smith* v. *Day* (1882), 21 Ch. D. 421; *Schlesinger* v. *Bedford*, W. N. (1893), p. 57.

(*c*) *Walcot* v. *Walker* (1825), 7 Ves. 1; *Wilkins* v. *Aiken* (1810), 17 Ves. 422. See *British Tanning Co.* v. *Groth* (1890), 7 Rep. Pat. Cas. 1 (a patent case). As to dissolving an injunction, see Kerr. Injunc., p. 584.

(*d*) *Vide* 2 Mer. 439; *Hime* v. *Dale* (1803), 2 Camp. 31, *notis*, *per* Lord Ellenborough: *Bauchet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73.

done in equity, which is only auxiliary to the law, and therefore gives not relief, except where the law gives damages (*a*).

Consequently an injunction will *not* be *issued to restrain the* publication of a literary composition, on the ground that it is injurious to the reputation or hurtful to the feelings of the person seeking relief. Nor on the ground that it is libellous or blasphemous, immoral or mischievous (*b*), or that the plaintiff's book is piratical (*c*).

And where there is a fair doubt whether damages could be recovered at law, a court of equity will not maintain an injunction granted *ex parte*, but will leave the plaintiff to establish his legal right before it interferes in his behalf (*d*).

So also where evidence as to the plaintiff's right is contradicted by the defendant's evidence, no injunction will be granted until the right of the plaintiff be established at law. Thus where the copyright of the work has been assigned by the author to the plaintiff, and the plaintiff and author swore that A. (a stranger to the suit) had only a qualified interest in the work, but A., in an affidavit filed by the defendant, swore that, under a bargain between him and the author, he had the entire copyright of the work, but did not state any deed of assignment, the plaintiff was held not entitled to an injunction till he had established his right at law (*e*).

Scotch law on this subject.

In Scotland the question is disposed of otherwise; the principle adopted in English practice is not sanctioned. Even if property in the work be the sole ground of interdict, the proof of ownership alone (undistracted by any inquiry into the nature or value or subject of it) in that country guides judicial interference. For the use or abuse of that property the law provides another remedy, in administering which, that particular use forms the true point of inquiry.

Trifling cases.

In trifling cases an injunction has been denied. Thus, in a periodical work of theatrical criticism, the defendant inserted a few pages of scattered passages from a farce of the plaintiff, forty pages in length. The profits did not amount to £3, and the court dismissed the bill for an injunction (*f*). So, an

(*a*) *Walcot* v. *Walker* (1802), 7 Ves. 1; *Lawrence* v. *Smith* (1822), 1 Jac. 471; *Murray* v. *Benbow* (1822), 1 Jac. 474, *notis*; *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*b*) *Southey* v. *Sherwood*, *ubi sup*; *Hime* v. *Dale* (1803), 2 Camp. 27, note *b*; *Seeley* v. *Fisher* (1841), 11 Sim. 581; *Clark* v. *Freeman*, 11 Beav. 112; *Walcot* v. *Walker*, *supra*.

(*c*) *Cary* v. *Faden* (1799), 5 Ves. 24.

(*d*) *Byron* (*Lord*) v. *Dugdale* (1823), 1 L. J. Ch. (O.S.) 239; 25 R. R. 282.

(*e*) *Lowndes* v. *Duncombe* (1823), 1 L. J. Ch. (O.S.) 51.

(*f*) *Whittingham* v. *Wooler* (1817), 2 Swans. 428; see *Bell* v. *Whitehead* (1839), 8 L. J. Ch. 141; 3 Jur. 68; *Ward*, *Lock & Co.* v. *Scott*, W. N. (1886) 190; *Springfield* v. *Thame* (1903), 89 L. T. 200; but see *Lucas* v. *Williams* (1892), 61 L. J. Ch. 596.

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injunction was refused against the copying of tables of calculations, which could be cast anew for less than £8, and in a short time (*a*), and where the infringement consisted in copying a collection of facts easily obtained (*b*).

Where in 1830, A., a foreigner resident in Paris, made a legal assignment of his copyright in an opera ('Fra Diavolo') to L., a resident in England, and L., in the same year, sold his interest to C., without executing any written memorandum, and C. died in 1834, and in 1836 C.'s executrix obtained a legal assignment, and in the meantime copies of the full score had been imported into England, and sold in London by several tradesmen, and in 1841 P. published and sold the overture of the opera in London; the court held, that C.'s executrix could not maintain an injunction against P. for piracy, on the ground that the question being whether a party who, before the copyright had been actually parted with to him (because at the time there was no conveyance), had permitted the books to be imported here and sold without interference, was afterwards to be at liberty to come forward and say that no party should do the like again, and that it was an important question, and the court thought it sufficiently doubtful to prevent any interference by injunction until it was decided (*c*).

When a portion only of the work is piratical.

We have already noticed the principles by which the court will be guided as to ordering delivery of copies of infringing works when the latter are only partial infringements (*d*). Upon similar principles, when the part which has been copied from the plaintiff's work can be separated from that which has not been copied, an injunction will be granted only against the objectionable part or parts, but even where a very large portion of a work of a piratical nature is unquestionably original, if the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing, for an injunction will be issued against the whole.

To what extent the

The opinion of Lord Hardwicke (*e*) appears to have been

(*a*) *Baily* v. *Taylor* (1829), 1 Russ. & My. 73.
(*b*) *Cox* v. *Land and Water Co.* (1869), 18 W. R. 206.
(*c*) *Chappell* v. *Purday* (1845), 4 Y. & C. 485.
(*d*) *Ante* p. 204.
(*e*) 4 Burr. 2326. See *Campbell* v. *Scott* (1842), 11 Sim. 31; *Kelly* v. *Hooper* (1840), 4 Jur. 21; *Whittingham* v. *Wooler* (1817), 2 Swans. 428; *Cobbett* v. *Woodward* (1874), L. R. 14 Eq. 407: see *Story's Executors* v. *Holcombe*, 4 McLean (Amer.). 306, 315; *Warne & Co.* v. *Seebohm* (1888), 39 C. D. 73, 82; *Leslie* v. *Young* (1894), A. C. 335.

that an injunction might be granted against the whole, although only a portion was pirated; and in the instance of Milton's 'Paradise Lost,' with Dr. Newton's notes, there being nothing new in that work except the notes, he granted an injunction against the entire book. There is the record of a case tried before Lord Kenyon (*a*), in which he states that the question whether an injunction could be issued against the whole of a book on account of the piratical quality of a part, came before Lord Bathurst; and Lord Bathurst seems to have held it could not, unless the part pirated was such, that granting an injunction against such part necessarily destroyed the whole. Lord Kenyon, who possessed great information on this subject, states himself to have been perfectly satisfied with the opinion of Lord Bathurst, as bearing upon the judgment of Lord Hardwicke and the other cases. In the case referred to before Lord Kenyon the declaration at law contained a count for publishing the whole work, and another for publishing a part; and Lord Kenyon's direction to the jury seems to have been to find damages for publishing the part only.

Injunction is to go.

"As to the hard consequences which would follow from granting an injunction," said Lord Eldon, in *Mawman* v. *Tegg* (*b*), "when a very large proportion of the work is unquestionably original, I can only say, that, if the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame."

"In the cases which have come before me," continued the Lord Chancellor, in the case from which we have already quoted, "my language has been, that there must be an injunction against such part as has been pirated; but in those cases the part of the work which was affected with the character

(*a*) *Vide Cary* v. *Longman* (1801), 1 East, 360; *Trusler* v. *Murray* (1789), 1 East, 363.

(*b*) (1826), 2 Russ. 385, 391; 26 R. R. 112.

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of piracy was so very considerable, that if it were taken away there would have been nothing left to publish except a few broken sentences. Now, the difficulty here is this: whether I have before me sufficient grounds to authorize me to say, how far the matter which is proved (if I may use the word) to have been copied, is sufficient to enable me to decide how much I can enjoin against; and if I can be thus authorized to say how much I can enjoin against, then the question is, what will be the effect of that injunction applied to so much of the work, in the state of uncertainty in which we now are? Or whether, on the other hand, as the matter cannot be tried by the eye of the judge, I must not pursue a course which has been adopted in cases of a similar nature, namely, refer it to the Master to report to what extent the one book is a copy of the other, upon the comparison of all the numbers [the works were periodicals] that have been published?

"Another way of ascertaining the facts of the case is to send it to a jury; and, in either of those ways of disposing of it, the court will order the defendant to keep an account of the profits in the meantime. But one difficulty in all these cases is that, though keeping an account of the profits may prevent the defendant from deriving any profit, as he may ultimately be obliged to account to the plaintiff for all his gains, yet, if the work, which the defendant is publishing in the meantime, really affects the sale of the work which the plaintiff seeks to protect, the consequence is, that the rendering the profits of the former work to the complaining party may not be a satisfaction to him for what he might have been enabled to have made of his own work if it had been the only one published; for he would argue, that the profits of the defendant, as compared with the profits which he, the plaintiff, had been improperly prevented from making, could only be in the proportion of 8s., the price of a copy of the one book, to one guinea, the price of a copy of the other. If the principle upon which the court acts, is, that satisfaction is to be made to the plaintiff, I cannot see, though I never knew it done, why, if a party succeeds at law in proving the piracy, the court could not give him leave to go on to ascertain, if he can, his damages at law; or if, after applying the profits which are handed over to him by the defendants, he can show that they were not a satisfaction for the injury done to him, I cannot see why the court might not in such a case direct an issue to try what further damnification the plaintiff had sustained."

Where the court, availing itself of the evidence read pending

the motion, was led to conclude, that if the parts affected with the character of piracy were taken away, there would be left an imperfect work which could not, to any useful extent, serve the purpose intended by the publication, the injunction to restrain the publication of any parts pirated from the plaintiff's work was granted, without waiting till all the parts pirated could be distinctly marked (*a*).

Similarity of appearance.

An injunction may be obtained to restrain the publication of a book whose external appearance so nearly resembles that of a work wherein copyright exists as to have the effect of deceiving the public, by leading them to believe it to be the same or a continuation thereof (*b*).

Thus in one case the defendant was restrained from publishing, selling, or offering for sale the defendant's work, in or with its present form, title-page, or cover; or any other form, title-page, or cover, calculated to deceive persons into the belief that it was the plaintiff's work (*c*).

An in another case (*d*) Lord Romilly, M.R., said: "The defendants must be restrained from the publication of this work, and they are not entitled to publish a work with such a title, or in such a form as to binding or general appearance as to be a colourable imitation of that of the plaintiff."

The true criterion in such cases must be the effect upon the public, whether the similarity of the one publication to the other is so great as to mislead the public—is such as that an intending purchaser of the one might be misled into purchasing the other (*e*). And where such a similarity does not exist the court will not interfere. Thus where there was a well-known comic paper called 'Punch,' and another called 'Judy,' and the defendant issued a publication with the title, 'Punch and Judy,' the court held that though the defendant would not be at liberty to use either 'Punch' or 'Judy' singly as a title, yet there was no reason why he should not use the two combined, for in such combination the title was not such as to deceive persons of ordinary intelligence. The Vice-Chancellor considered that the defendants clearly had no right to use a name which was calculated to mislead or deceive the public in purchasing, and he intimated that if he had thought on the whole that their journal was calculated to mislead

(*a*) *Lewis* v. *Fullarton* (1839), 2 Beav. 6; *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Stevens* v. *Wildy* (1850), 19 L. J. Ch. 190.

(*b*) *Spottiswoode* v. *Clarke* (1846), 2 Phillips, 154; *Chappell* v. *Davidson* (1855), 2 K. & J. 123.

(*c*) *Metzler* v. *Wood* (1878), 8 Ch. D. 609.

(*d*) *Mack* v. *Petter* (1872), L. R. 14 Eq. 431.

(*e*) *Reddaway* v. *Banham* (1896), A. C. 199; *Parsons* v. *Gillespie* (1898), A. C. 239.

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persons of ordinary intelligence (for those were the persons he had to consider) he would have granted the injunction. "'Punch,'" said he, "is well known both in name and appearance. And its price is threepence. Could any one be misled into buying this other paper instead, which has the words 'Punch and Judy' printed on it in distinct letters, with a different frontispiece and its price a penny? I am clearly of opinion that the mass of mankind would not be so misled" (*a*).

Publication falsely represented to be the production of another.

An injunction may be obtained to restrain the publication of a literary composition falsely represented to be the production of the plaintiff (*b*); and also of manuscripts obtained surreptitiously (*c*); or about to be published in breach of some contract whereof the plaintiff has the benefit (*d*).

The well-known composer, Gounod, in 1872 took proceedings against the publishers, Messrs. J. B. Cramer and Co., and Messrs. Hutchings, to restrain them from the publication of songs stated on the title-page to have been "composed by Gounod." In the first suit the two songs in question were called 'Good Night, Heaven bless you!' and 'Hero and Leander.' They were neither written nor composed by Gounod, nor published by his authority, the music of the first being taken from a short chorus for soprano voices, written by the plaintiff, and entitled 'Bon Soir,' to which an accompaniment full of musical faults had been added; and the music of the second being taken from a duet composed by the plaintiff for one of his early operas entitled 'La Reine de Saba,' with the music altered and the end changed.

These songs, the plaintiff alleged, were of a low order of merit, and calculated to injure his musical reputation. The defendants submitted to a perpetual injunction and paid the costs of the suit. In the second case, which was in respect of seven songs and three duets, the defendants stated that they had acted only in accordance with the custom of the trade in selling arrangements of music, but they offered to refrain from selling any of the works complained of with their present title-

(*a*) *Bradbury* v. *Beeton* (1869), 18 W. R. 33; *Cowen* v. *Hulton* (1882), 46 L. T. 897; *Walter* v. *Emmott* (1885), 54 L. J. Ch. 1059; *Borthwick* v. *The Evening Post* (1888), 37 Ch. D. 449, in which it was laid down that the plaintiff must show that there is a probability that he will be injured. See *ante* p. 64 *et seq.*

(*b*) *Byron* v. *Johnston* (1816), 2 Meriv. 29; *Seeley* v. *Fisher* (1841), 11 Sim. 581; see *Wright* v. *Tallis* (1845), 1 C. B. 893; *Gounod* v. *Wood*; *Gounod* v. *Hutchings*, 'Times,' Nov. 22, 1872.

(*c*) *Tipping* v. *Clarke* (1844), 2 Hare, 383; *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 652; 1 M. & G. 25.

(*d*) *Colburn* v. *Simms* (1842), 2 Hare, 543; *Ward* v. *Beeton*, L. R. 19 Eq. 207; *Kemble* v. *Keen*, 6 Sim. 333; see *Brooke* v. *Chitty*, 2 Coop. (*temp.* Cottenham), 216; *Barfield* v. *Nicholson* (1824), 2 Sim. & Stu. 1; 25 R. R. 144.

pages, and to undertake not to sell any arrangement of M. Gounod's music without expressing on the title-page that the music was arranged from music by him. And these terms were agreed to (*a*).

So where a mining engineer K. made a report upon a mining property and handed it to a person engaged with a syndicate in bringing out a company. It was agreed between them that the report might be printed and shown to the syndicate, and if they determined to proceed with the formation of the company and published the report, K. was to be paid £1000 for it, but if the company was not proceeded with, the report was to be returned to him. Some 100 copies of the report were printed and shown to the syndicate. Copies were given to some of the members of the syndicate, and to one or two other persons. The proposed company having been abandoned, the defendant company took up the property, and having obtained a copy of the report, made use of it in the prospectus issued by them, and it was held that K. was entitled to an injunction against the company to restrain them from publishing the report, which damaged his property, and also to an inquiry as to damages (*b*).

Due diligence to be observed in obtaining an injunction.

A person who solicits the assistance of the court for the protection of his copyright from violation must evince due assiduity and diligence in coming to the court. Delay or acquiescence will be fatal to the success of the application unless it can be satisfactorily accounted for (*c*).

If a party is guilty of laches or unreasonable delay in the enforcement of his rights, he thereby forfeits his claim to equitable relief,—more especially where being cognizant of his rights, he does not take those steps to assert them which are open to him, but lies by and suffers other parties to incur expenses. The court looks most minutely to the time during which the parties have permitted the matter to proceed, and will not allow them to obtain an injunction in the absence of the other party, when they have themselves, for some time, acquiesced (*d*). Acquiescence, although not conferring a right on the opposite party, deprives the complainant of his right to the interference of a court of equity, for unless the applicant

(*a*) *Gounod* v. *Wood*; *Gounod* v. *Hutchings*, 'Times,' 22 Nov. 1872.

(*b*) *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R. 473.

(*c*) *Mawman* v. *Tegg* (1826), 2 Russ. 385, 393; *Baily* v. *Taylor* (1829), Taml. 295; 1 Russ. & My. 73; *Campbell* v. *Scott* (1842), 11 Sim. 31; 11 L. J. Ch. 166; 6 Jur. 186; *Buxton* v. *James* (1851), 5 De G. & Sm. 80; *Tinsley* v. *Lacy* (1861), 1 H. & M. 747: *Lewis* v. *Chapman* (1840), 3 Beav. 133; *Crossley* v. *Derby Gas-Lights Co.* (1834), 4 L. J. Ch. 25; 1 Webs. 119, 120; *Parrott* v. *Palmer* (1835), 3 M. & K. 643; *Harrison* v. *Taylor* (1865), 11 Jur. (N.S.) 408; see *Bagot* v. *Bagot* (1863), 32 Beav. 509.

(*d*) *Per* Lord Langdale, M.R., in *Mexborough* v. *Bower* (1845), 7 Beav. 130.

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has acted promptly, he is held to have impliedly authorized what he eventually objects to.

In *Mawman* v. *Tegg* five months delay was adequately explained by the necessity of comparing the whole of the two works for the purpose of discovering the extent of the piracy (*a*).

What sufficient excuse for delay.

And where the copyright of a work of an alien had been sold to a British subject, who published it in this country in 1844, and the copyright was infringed in 1849, but the state of the law then rendered it very doubtful whether the copy right was protected, and the purchaser merely protested against the infringement, but in 1851, within a reasonable time after the decision of a case in the Exchequer Chamber had established, as was then supposed, the general question of copyright in an alien, he filed his bill, and moved to restrain the publication of the pirated work, the court held that there had been no such delay as to disentitle him to an injunction (*b*). But where the publication of which the plaintiff complained as a piracy was completed six years and a half before the bill was filed, and for more than a year before the bill was filed a complete copy of the defendant's work was in the possession of the plaintiffs; the court said that it was its duty, in the circumstances of the case, to impute to the plaintiffs such a knowledge of the contents of the defendant's work as made it their duty to apply for an injunction, if at all, at a much earlier period (*c*).

Tendency of modern decisions on the subject.

The tendency of modern times is towards the doctrine that a person does not lose his rights in equity by mere delay, and the decision of Vice-Chancellor Hall in *Hogg* v. *Scott* (*d*) is in favour of such view. In that case it appeared that the defendant had published in 1868 the first edition of a work called 'The Orchardist,' and in the latter part of 1872 the second edition, the book containing matter pirated from the plaintiff's works. He also intended to publish a third edition. In August 1873, the plaintiff applied for an injunction to restrain the defendant from further publishing or selling any copies of such piratical work. In defence it was urged that the plaintiff had knowledge in 1869 of the piracy, and was therefore barred by delay from sustaining his suit; that the defendant was entitled to re-issue in his third edition

(*a*) *Vide Smith* v. *London and S. W. Railway Co.* (1853), 1 K. 408, 412; *Lewis* v. *Chapman* (1840), 3 Beav. 133, 135; *Bridson* v. *Benecke* (1848), 12 Beav. 3; *Lewis* v. *Fullarton* (1839), 2 Beav. 8; *Buxton* v. *James* (1851), 5 De G. & Sm. 80; 16 Jur. 15; *Wintle* v. *Bristol and S. Wales Union Railway Co.*, 6 L. T. 20; *Bacon* v. *Jones* (1839), 4 My. & Cr. 433.

(*b*) *Buxton* v. *James*, *supra*.

(*c*) *Lewis* v. *Chapman*, *supra*.

(*d*) (1874), L. R. 18 Eq. 444; *Fullwood* v. *Fullwood* (1878), 9 Ch. D. 176 (an action of deceit).

anything which had appeared in the earlier ones. The court held that, even if the plaintiff had been aware of the piratical nature of the defendant's book for four years before commencing the suit, he was not thereby deprived of his remedies in equity. "The omission to take any proceedings at law or in equity for a time," said the Vice-Chancellor, "does not in itself appear to me an encouragement to the defendant amounting to an equitable bar in this court. It is not enough to show that the legal right is not to be protected here."

So in a case (*a*) where the defendant's book had passed through three editions, the first having been published in 1879, and he had sent the plaintiff a copy of each edition, but the plaintiff did not bring his action till 1884, it was held that there had been no such delay in taking proceedings as to disentitle the plaintiff to an injunction as there had been no waiver of the plaintiff of, or acquiescence or assent in, what had been done by the defendant.

Institution of proceedings after lapse of twelve months.

One of the defences in the case of *Hogg* v. *Scott* was, that the statutory limitation contained in section 26 of the Act applied to all actions and suits, whether for the penalties or damages or injunctions, and hence that the plaintiff's suit was barred by lapse of time. But to this the Vice-Chancellor replied: "I cannot allow the objection taken to the plaintiff's right to sue, because more than twelve months elapsed before he filed a bill in this court. By the 3rd section of the statute a property is created in an author's work which *primâ facie* is to endure for a term certain, and that property will remain in the author or his representatives, as owners of it, till it be taken away from him or them. The argument that, if a case arises for a suit in respect of the author's right to his property, and the author does not commence his suit within twelve months, that therefore his property is gone, I do not agree with. I do not find that clearly expressed in the statute, and I cannot put such a construction upon the 26th section. The 15th section gives to an owner of copyright a special action on the case in respect of any piracy. The remedy so provided is apparently a cumulative one; and, whether it be so or not, is not very important. The remedy is given against the person who is called the 'offender,' and the act spoken of as the 'offence' is the printing for sale or exportation of any book in which there shall be subsisting copyright. Mr. Morgan, in his argument, contended that the court ought to put upon the

(*a*) *Pitman* v. *Hine* (1884), 1 T. L. R. 39; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L.R. 184.

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word 'offence' in the 26th section the same construction as it bears in the 15th section of the statute. If that were a reasonable construction it might be adopted; but looking at the other sections in the statute which refer to penalties, I do not think it would be reasonable. There is nothing to be found in them about any 'offence,' in the sense contended for on the part of the defendant. If the book which had been improperly published by the defendant contains property belonging to the plaintiff, the owner of the copyright, I do not see how it can be successfully contended that he is suing in respect of an offence in the sense urged on the part of the defendant. The plaintiff is suing in respect of his copyright; that is his property. The 20th section is, no doubt, not very happily framed; but I am of opinion that, on the true construction of that and the other sections of the statute, the 'offence' contemplated by it must be the doing, in contravention of its provisions, of something expressly prohibited by them.

"The real question is, what is the 'offence' intended by the statute? It is the printing for sale or exportation of any work, or part of a work, by a person who is not the owner of the copyright of that work, and without the consent of the owner. The non-suing by the owner of the copyright in respect of a particular edition, or part of an edition, of the defendant's work is one thing, and ev[illegible] it could be said that so far the owner's remedy was barred by his own neglect, still I find nothing in the statute which states that the person who has already published the edition or part of the edition complained of, may go on doing so, and that if he does, the owner has then no remedy for such further 'offence.' . . . The right of the owner of the copyright to his property in it, is not to cease because one copy of the work, which without his sanction contains the piracies, has been sold and disposed of without any complaint on his part. He is not on that account to lose all his property in his copyright; therefore I hold, in accordance with the decisions referred to, and on the construction of the statute, that the plaintiff has not lost his right to sue."

If the conduct of the party complaining has conduced to the condition of affairs that occasions the application, or has been such as to lead to the supposition that the publication would not be objected to, he may be refused relief (*a*).

(*a*) *Bendell* v. *Murray* (1821), Jac. 311; *Saunders* v. *Smith* (1838), 3 My. & Cr. 711; 7 L. J. (N.S.) Ch. 227; 2 Jur. 491, 536. See also *Lewis* v. *Chapman* (1840),

Injunctions not granted generally where there has been acquiescence.

In *Rundell* v. *Murray* (*a*), where it appeared that the plaintiff had given a manuscript to the defendant and permitted him to publish it as his own for fourteen years, at the end of which period she claimed the exclusive property in it, and sought to restrain the defendant from further publishing it, Lord Eldon, in refusing to grant the injunction sought, said: "There has often been great difficulty about granting injunctions, where the plaintiff has previously by acquiescing, permitted many others to publish the work; where ten have been allowed to publish the court will not restrain the eleventh. A court of equity frequently refuses an injunction where it acknowledges a right, when the conduct of the party complaining has led to the state of things that occasions the application, and therefore, without saying with whom the right is, whether it is in this lady, or whether it is concurrently in both, I think it is a case in which strict law ought to govern."

On somewhat similar grounds to this, yet, under the circumstances of the case pressing the doctrine still further, Lord Cottenham acted in *Saunders* v. *Smith*, where he refused to restrain the publication of the second volume of 'Smith's Leading Cases' before trial at law, for the reason that he found "in the dealings of the plaintiff in this case what amounts to that species of conduct which prevents, in this stage of the cause at least, the interposition of this court." And he continued, referring to the case of *Rundell* v. *Murray*, "Lord Eldon there lays it down that not only conduct with the party with whom the contest exists, but conduct with other, may influence the court in the exercise of its equitable jurisdiction by injunction. Now here I find permission, whether express or implied, given to others" (*b*).

The view taken in this case by Lord Cottenham does not seem to have met with unqualified approval in later times, and in a more recent case (*c*) where it was stated in defence by one of the defendants that the plaintiff had said to him that it would not be unlawful for any one to copy certain parts from the plaintiff's or any other directory, the Vice-Chancellor said: "A copyright is not lost by the mere expression of an opinion." "In order that the defence should prevail, it must be made out that there is proof of, at least, one of three propositions:

3 Beav. 135; *Platt* v. *Button* (1813), 19 Ves. 447: S. C. *nom. Platts* v. *Button*, Coop. 303; *Campbell* v. *Scott* (1842), 11 Sim. 31: 11 L. J. Ch. 166: 6 Jur. 186; *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*a*) *Supra*, cf. *Dennison* v. *Ashdown* (1897), 13 T. L. R. 226.

(*b*) (1838), 3 My. & Cr. 729.

(*c*) *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34: *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

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viz., either that the plaintiff authorized what was done by the defendants; or that his conduct conduced to what was done by them; or that there is enough to displace the *prima facie* proof of the plaintiff's copyright."

Custom of trade no excuse for piracy.

No custom of the trade can be pleaded as a justification for infringement of the copyright. Thus in a case (*a*) where the publisher of the 'Belgravia Magazine' and the 'Belgravia Annual' was plaintiff, it appeared that the periodical had been sent for about eight years to the defendants, who had been in the habit of selecting therefrom extracts, and occasionally entire stories, and reprinting them in the 'Bristol Mercury.' The 'Mercury' was a weekly paper, and copies of the same were sent to the plaintiff, he thus being acquainted with the defendants' general custom. In 1873, the defendants received the 'Belgravia Annual' wit[illegible]quest to notice it in their paper. [illegible] one entire story. The following month to this they reprinted another story from the magazine, in each case the sources from which the tale emanated being acknowledged. Without any notice to the defendants the plaintiffs moved to restrain the further publication or sale of any copies of the paper containing either of the stories. In defence the custom of the trade was relied on, but V.-C. Bacon held that any such alleged custom was no defence, and that the defendants could not thus be justified in reprinting, as they had done, entire stories, and the injunction sought for was accordingly granted.

As to bringing to hearing where interlocutory injunction granted.

Where an interlocutory injunction is granted it does not often happen that the cause is brought to a hearing; for the merits of the case will probably have been discussed upon the motion (*b*), and therefore it rarely happens that a perpetual injunction is decreed (*c*). If, however, the cause should be brought to a hearing, the court will then, if the plaintiff's cause be relieved of all doubt, grant a perpetual injunction (*d*), or it will dismiss the plaintiff's action (*e*). And the plaintiff has a right to bring his cause to a hearing for the purpose of obtaining a perpetual injunction, although he has obtained an interlocutory injunction, which has been acquiesced in by the defendant, and though the general rule of the court is not

(*a*) *Maxwell* v. *Somerton* (1874), 30 L. T. 11; 22 W. R. 313: *Campbell* v. *Scott* (1842), 11 Sim. 31; *Wyatt* v. *Barnard* (1814), 3 V. & B. 77; *Walter* v. *Steinkopff* (1892), 3 Ch. 489, where North, J., stated the defence of custom of the trade has always been repudiated by the Courts.

(*b*) 4 Burr 2324, 2400; *Tonson* v. *Walker* (1752), 3 Swans. 672; 2 Eden, 328.

(*c*) 2 Sw. 430. See *Whittingham* v. *Wooler* (1817), 2 Swans. 428, n.

(*d*) *Macklin* v. *Richardson* (1770), Amb. 694.

(*e*) *Dodsley* v *Kinnersley* (1761), Amb. 403.

to grant perpetual injunctions except at the hearing of the cause, yet by consent an injunction may be made perpetual on an interlocutory motion (*a*).

It is not necessary to apply in the first instance on interlocutory application, for a perpetual injunction may be obtained without such application at the hearing (*b*); but care should be taken in such case to bring the cause to the hearing in a state such as to enable the court to adjudicate upon it without delay; for it is a mere matter of discretion how far the court will assist at the hearing if this be neglected (*c*).

Not necessary to show damage.

If the plaintiff show that his copyright has been infringed, the court will grant an injunction without proof of actual damage (*d*).

"Then the only question," said Vice-Chancellor Shadwell (*e*), "is whether there has been such a *damnum* as will justify the party in applying to the Court; because *injuria* there clearly has been. What has been done is against the right of the plaintiff. Now, in my opinion, he is the person best able to judge of that himself; and if the court does clearly see that there has been anything done which tends to an injury, I cannot but think that the safest rule is to follow the legal right and grant the injunction."

Where a plaintiff claiming a copyright in a work of a foreigner obtained an injunction on giving an undertaking to abide by any order the court might make respecting damages, and the law was, pending the suit, finally settled against the existence of such a copyright, the Lords Justices held that the defendant was entitled to have the damages sustained by him ascertained as correctly as practicable and paid, and that a mere dismissal of a bill with costs was not a sufficiently accurate assessment and award of damages (*f*).

We will conclude this subject with the words of Sir William D. Evans: "It is clear," says he in the second volume of his Statutes, "that the proceeding by injunction is the most ready and effectual remedy which can be resorted to on the part of

(*a*) *Morrell* v. *Pearson* (1848), 12 Beav. 284.

(*b*) *Bacon* v. *Jones* (1839), 4 M. & C. 436; *Collins & Co.* v. *Walker* (1869), 7 W. R. 222; *Davies* v. *Marshall*, 1 Dr. & Sm. 557; *Gale* v. *Abbott* (1862), 8 Jur. (N.S.) 987.

(*c*) *Bacon* v. *Jones*, *supra*; *Ward* v. *Key* (1846), 10 Jur. 792; *Rodgers* v. *Nowill* (1847), 6 Hare, 331; *Norton* v. *Nicholls* (1857), 4 K. & J. 475; *Patent Type Foundry Co.* v. *Walter* (1860), Johns. 721.

(*d*) *Smith* v. *Johnson* (1863), 33 L. J. (Ch.) 137; 9 Jur. (N.S.) 1223; but see *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449, there must be a probability of damage if the plaintiff seeks to restrain the use of a title.

(*e*) *Campbell* v. *Scott* (1842), 11 Sim. 3 *Tinsley* v. *Lacy* (1861), 38 L. J. Ch. 539; *Kelly* v. *Hooper* (1840), 4 Jur. 21 *Maugham* (1840), 11 Sim 51.

(*f*) *Novello* v. *James* (1853), 5 De G. [illegible] 876.

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the plaintiff. But this a great degree of caution in the application of that proceeding, in the first instance, is requisite for preventing injustice to the defendant, whose loss does not, from the nature of it, admit of reparation if the injunction should, upon further investigation, be found to have been erroneously applied; and the judges of courts of equity have in many cases expressed a strong sense of the importance of this principle."

4thly. As to an account:—

Right to account.

The right to an account of profits is incidental to the right to an injunction (*a*), but a plaintiff cannot obtain both an account and an inquiry as to damages (*b*).

The account is in practice generally waived; but where it is not, the court grants it upon the principles enumerated in *Colburn* v. *Simms* (*c*). "It is true," said Sir James Wigram in that case, "that the court does not, by an account, accurately measure the damage sustained by the proprietor of an expensive work from the invasion of his copyright by the publication of a cheaper book. It is impossible to know how many copies of the dearer book are excluded from sale by the interposition of the cheaper one. The court, by the account, as the nearest approximation which it can make to justice, takes from the wrongdoer all the profits he has made by his piracy, and gives them to the party who has been wronged. In doing this the court may often give the injured party more, in fact, than he is entitled to, for *non constat* that a single additional copy of the more expensive book would have been sold, if the injury by the sale of the cheaper book had not been committed. The Court of Equity, however, does not give anything beyond the account."

Discovery for purposes of account.

A plaintiff is entitled to discovery for the purposes of the account.

Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the court, or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter, in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made

(*a*) *Hogg* v. *Kirby* (1803), 8 Ves. 215; *Baily* v. *Taylor* (1829), 1 Russ. & My. 73; *Sherriff* v. *Coates* (1830), 1 R. & M. 159; *Kelly* v. *Hooper* (1840), 1 Y. & C. C. C. 197; *Orierson* v. *Eyre* (1804), 9 Ves. 341; *Oxford & Cambridge* v. *Richardson* (1802), 6 Ves. 689; 2 Story's Equity, s. 933.

(*b*) *De Vitre* v. *Betts* (1873), L. R. 6 H. L. 319.

(*c*) (1843), 2 Hare, 543. 560; 12 L. J. Ch. 388; 7 Jur. 1104. See *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 255.

an affidavit to be used, or which shall be used, on any proceeding in the cause or matter, shall be bound, on being served with such subpœna, to attend before such officer or person for the purpose of cross-examination (*a*). However, no weight is to be attached to an affidavit where the opposite party has had no opportunity to cross-examine the witness (*b*).

Nature of discovery given.

Though the general rule of the court is that he who gives discovery at all must give full discovery, yet the court will take care that injury shall not be done to a defendant by compelling him to make discovery in a case where there is no real prospect of its being of material service to the plaintiff at the hearing. Therefore in a suit to restrain the alleged improper use by the defendants of the plaintiffs' trade marks where the defendants denied the plaintiffs' right to the exclusive use of the marks in question, it was held by the Lords Justices (reversing a decision of Vice-Chancellor Wickens) that the defendants, under an order for production of documents, were not bound to disclose the names of their customers, nor the prices at which they bought or sold the goods which they exported; but it was held that they must state the names of the places to which they exported goods, the name of the writer of any letter addressed to them by a former partner of their own, and, in any case in which they admitted that they used one of the marks claimed by the plaintiffs, the other marks which they used in combination therewith (*c*).

Where no account allowed.

There can be no account if the case for the injunction fails, or if at the hearing there is nothing on which an injunction can operate (*d*), or in respect of acts unattended with profits (*e*). The rule applies even although it may appear that since the notice for an interim injunction the defendant has sold articles which the court would, upon that application, have restrained him from selling, had the facts and the law been at that time sufficiently ascertained (*f*).

To what account limited.

It is not necessary specifically to ask for an account, for it may be ordered under the prayer for general relief. The account may have reference to past as well as future sales

(*a*) R. S. C., 1883, O. 37, r. 20; *Raymond* v. *Tapson* (1883), 22 Ch. D. 430.
(*b*) *Wightman* v. *Wheelton* (1857), 23 Beav. 397; 3 Jur. (N.S.) 124.
(*c*) *Carter* v. *Pinto Leite* (1871), 20 W. R. 134.
(*d*) *Baily* v. *Taylor* (1829), 1 R. & M. 73; 32 R. R. 146; *Price's Patent Candle Co.* v. *Bauwen's Candle Co.* (1858), 4 K. & J. 727; see *Garth* v. *Cotton*, 3 Atk. 751; 1 Ves. 524, 546.
(*e*) *Lee* v. *Alston* (1789), 1 Ves. Jun. 78; 1 Bro. C. C. 194; 3 Bro. C. C. 37; *Colburn* v. *Simms* (1843), 2 Hare 560; *Powell* v. *Aikin* (1857), 4 K. & J. 343, 351
(*f*) *Price's Patent Candle Co.* v. *Bauwen's Candle Co., supra.*

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and may be ascertained from affidavits made by or on behalf of the defendants (*a*).

The account is limited to the net profits actually made and the moneys actually received by the wrongdoer (*b*).

It was held in an American case (*c*) that commissions on the sale of a pirated work, received by a bookseller from the publisher of it, were profits which the bookseller must account for to the proprietor of the copyright, where a decree for an account had been made. Curtis, J., in the case referred to, said: "If the proprietor will waive his action for damages, he may have an account of profits, upon the ground that the defendant has, by dealing with his property made gains which equitably belong to the complainant, and I perceive no sound reason for restricting those gains to the difference between the cost and the sale price of the map or book, or limiting the right to an account to those persons who have sold the work solely on their own account. He who sells on commission does in truth sell on his own account, so far as he is entitled to a percentage on the amount of the sales. What he so receives is the gross profit coming to him from the proceeds of the sales, and what he so receives, diminishes the net profit of the one who employs him to sell. That part of the profits of the sales, being in the hands of the commission merchant, the consignor is not accountable for them. But why should not the commission merchant, who has them, account for them? He was liable to an action for damages for selling. That right is waived. I think he should pay over to the proprietor in lieu of damages, the gain he has made from the sales. It does not seem to me that the term 'profits' necessarily, or, when construed in reference to the subject-matter, properly has so restricted a meaning as to exclude commissions received from the proceeds of sales of the property of the complainant."

If the account small, usually waived.

If the account is small it is usually waived (*d*), and if the defendant submits, the suit does not proceed to the hearing, but a decretal order is made, giving effect to the agreement between the parties. The defendant must, if required to do so for the purpose of the account or the inquiry as to damages, set out the price and profit and names of the purchasers of the

(*a*) *Pike* v. *Nicholas* (1870), 20 L. T. 909; *Kelly* v. *Hodge* (1878), 29 L. T. 387.

(*b*) *Delfe* v. *Delamotte* (1857), 3 K. & J. 581; 3 Jur. (N.S.) 933; and see *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 255; but see *Muddock* v. *Blackwood* (1898), 1 Ch. 58.

(*c*) *Stevens* v. *Gladding*, 2 Curt. (Amer.) 608.

(*d*) See *Fradella* v. *Weller* (1830), 2 R. & M. 247.

pirated articles (*a*); and the plaintiff is entitled to continue in the suit, until the discovery is given (*b*).

Matters of procedure.

A plaintiff must be registered at Stationers' Hall before commencing proceedings to protect his copyright, but he can issue his writ the same day as he registers (*c*).

But the person registered as the proprietor of a copyright, the property in which is, in fact, in another person not so registered, cannot maintain an action for infringement (*d*). Nor can direct invasions of copyright by several persons be restrained in one suit, the right of an author against different booksellers selling the same spurious edition of his work not being joint, but perfectly distinct, for there is no priority between them (*e*). But a plaintiff must not act oppressively and issue an unnecessary number of writs: if he does, the court will order them to be consolidated or make some other equivalent order (*f*). It is no defence that the defendant had acted innocently (*g*).

An injunction against the seller will not be refused on the ground that the plaintiff has not proceeded against the publisher.

The court will not restrain one of the several partners in a patent from publishing a book containing an account of the invention (*h*).

If the defendant transfers his interest in the publication to another person, it seems that the latter may be made a party to the suit. Where a joint proprietorship exists, either party may sue (*i*).

In a recent case Mr. Justice Kekewich held that where a plaintiff had an assignment from some only of part owners, he was entitled to sue in trespass to prevent a stranger from interfering with his rights (*j*).

Formerly a bill of complaint was the formal document for

(*a*) *Stevens* v. *Brett* (1873), 12 W. R. 572; and with regard to patents, *Howe* v. *M'Kernan* (1860), 30 Beav. 547; see *Delarue* v. *Dickenson* (1857), 3 K. & J. 388.

(*b*) See *Colburn* v. *Simms* (1843), 2 Hare, 543; *Kelly* v. *Hooper* (1840), 1 Y. & C. C. C. 197.

(*c*) *Warne* v. *Lawrence* (1886), 54 L. T. 371; 34 W. R. 452; 2 T. L. R. 427.

(*d*) *London Printing Alliance* v. *Cox* (1891), 3 Ch. 291; *Petty* v. *Taylor* (1897), 1 Ch. 465. See Chapter on Registration, *ante*.

(*e*) *Dilly* v. *Doig* (1790), 2 Ves. 486; and see *Hudson* v. *Maddison* (1837), 12 Sim. 416; *Pollock* v. *Lester* (1852), 11 Hare 274; *Cowley* v. *Cowley* (1834), 9 Sim. 299; *Brinckerhoff* v. *Brown*, 6 John Ch. (Amer.) 155; see R. S. C. Or. xvi., Or. xviii.

(*f*) *Foxwell* v. *Webster* (1848), 10 Jur. (N.S.) 137; 12 W. R. 186; 2 De G. & Sm. 250; 9 Jur. (N.S.) 1189; Daniell's Chan. Prac., 7th Ed. 366, 1215. And as to multifariousness, R. S. C., 1883, O. 18.

(*g*) *Wittman* v. *Oppenheim* (1884), 27 Ch. D. 260.

(*h*) *Hawkins* v. *Blackford*, 1 L. J. (Ch.) 142.

(*i*) See *Lauri* v. *Renad* (1892), 3 Ch. 402.

(*j*) *Ib.*

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the commencement of a suit, but now, under the new procedure, suits have become actions and are commenced by writ of summons (*a*). The writ is to specify the division of the High Court to which it is intended that the action should be assigned (*b*), and if assigned to the Chancery Division it must be marked by the officer issuing the writ with the name of one of the judges of the Chancery Division to be ascertained in the manner now used in the distribution of business amongst the conveyancing counsel of the court. For this purpose a separate rotation is kept (*c*).

Every writ of summons is to be endorsed with a statement of the nature of the claim made, or of the relief or remedy required, in the action (*d*).—It is not essential in the endorsement to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled, but the general nature of the claim and relief sought must be clearly indicated, especially when different causes of action are joined, for the plaintiff will be limited to the endorsement on the writ unless he obtains leave to amend, or extends his claim by his statement of claim.

If the plaintiff has merely an equitable title, the person in possession of the legal title should be made a party (*e*). The right to sue for infringement of a registered design is vested in the registered proprietor only and a licensee has no right of action (*f*).

It was held not necessary to allege in a statement of claim under the Copyright of Designs Act, 5 & 6 Vict. c. 100, which provided that no person was to have the benefit of the Act *unless* every article had attached thereto the letters "Rd.," that had been done, and it was also held that a bill was not on the ground of such omission alone, open to a demurrer (*g*).

Rectification of register.

An application to rectify the register at Stationers' Hall may be made by summons, but is usually made by motion, on notice to the person on the register. The notice of motion is intituled in the matter of the particular entry and in the matter of the Copyright Act, 1842 (*h*).

(*a*) Rules of the Supreme Court, 1883, O. 1, r. 1.
(*b*) R. S. C., 1883, O. 2, r. 1.
(*c*) R. S. C., 1883, O. 5, r. 9, and see the Annual Practice.
(*d*) R. S. C., 1883, Ord. 2, r. 1.
(*e*) *Colburn* v. *Duncombe* (1838), 9 Sim. 151, and see *Jewitt* v. *Eckhardt* (1878), 8 Ch. D. 404; *Walter* v. *Howe* (1881), 17 Ch. D. 708; *Trade Auxiliary Co.* v. *Middlesbrough, &c., Association* (1887), 40 Ch. D. 425; but see *Petty* v. *Taylor* (1897), 1 Ch. 465.
(*f*) *Woolley* v. *Broad* (1892), 9 R. P. C. 208.
(*g*) *Sarazin* v. *Hamel* [No. 1] (1862), 32 Beav. 145.
(*h*) Daniell's Chanc. Pract. 7th Ed. 1211. For form of notice of motion, see

Every application for an interlocutory injunction must be supported by an affidavit of merits verifying the material statements of the plaintiff; and when the injunction is applied for *ex parte*, the affidavits in support should always state the precise time at which the plaintiff, or those acting for him, became aware of the alleged injury (*a*). They must show either that notice to the defendant would be mischievous, or that the mischief is so urgent that it would be done if notice were served on the defendant before the injunction could be obtained. If the affidavits fall short of this point, the motion will be ordered to stand over, and notice of it must be served on the defendant (*b*).

Upon the hearing no reference was formerly allowed to the affidavit filed upon the application for the injunction; but under R. S. C., 1883, O. 37, r. 1, the Court or Judge may, at any time, for sufficient reason order that the affidavit of any witness may be read at the hearing or trial on such conditions as the Court or Judge may think reasonable.

Not necessary to specify in statement parts of work said to be pirated.

Neither the statement of claim nor affidavit need specify the parts of the work stated to have been pirated (*c*); though no copyright is claimed in all the identical passages, a general allegation that the defendant's work contains pirated passages, and a verification by affidavit of those passages, are sufficient. The Vice-Chancellor, in *Sweet* v. *Maugham* (*d*) said, "It has always been considered sufficient to allege, generally, that the defendant's work contains several passages which have been pirated from the plaintiff's work. Then, when the injunction has been moved for, the two works have been brought into court, and the counsel have pointed out to the court the passages which they rely upon as showing the piracy." But if a plaintiff brings an action to protect a work, being only entitled to copyright in a small part of such work, he ought to tell the defendant in his claim what that part is, otherwise costs unnecessarily incurred must be borne by the plaintiff (*e*).

Where A. applied for an injunction against the stereotyper,

Daniell's Chanc. Forms, No. 1577. As to appeal, see *ex parte Hutchins* v. *Romer* (1878), 4 Q. B. D. 90, 483. See also *re* Red Letter Testament (1900), 17 Times, L. R. 1.

(*a*) An affidavit in which it was stated that the plaintiff had purchased or legally acquired the copyright, was considered to be bad, for not stating that he had purchased it from the author: *Gilliver* v. *Suaggs*, 4 Vin. Abr. 278.

(*b*) *Anon* (1823), 1 L. J. (Ch.) 1.

(*c*) A form of Statement of Claim is given in R. S. C. App. C. sect. vi.

(*d*) (1840), 11 Sim. 51; 9 L. J. (N.S.) Ch. 323; 4 Jur. 156, 179; *Hotten* v. *Arthur* (1863), 1 H. & M. 603; 32 L. J. (Ch.) 771; 11 W. R. 931; 9 L. T. (N.S.) 199.

(*e*) *Page* v. *Wisden* (1869), 17 W. R. 483, and generally a defendant can obtain an order for particulars.

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to prevent his selling copies printed by him from advance sheets, furnished him by A., of a work written by B., it was held that an allegation "That sheets were sent to him for the advantage of said B.," and of himself, was too vague to be made the foundation of an injunction on the ground of protecting B.'s rights (*a*).

In an American case (*b*), a bill was filed against three defendants showing title on its face in the plaintiff to a copyright, and showing a wrongful and wilful violation of it by all the defendants, and serious injuries inflicted by, and apprehended from such violation, and praying for an injunction against all the defendants, and for discovery from all. On general demurrer it was held that the relief by injunction was not dependent upon the discovery prayed for, but rested on the equities set forth in the bill, and might be refused or granted irrespective of the discovery, although the bill was bad as a bill of discovery.

On claim by assignee what must be shown.

If the plaintiff claims as assignee, he must, by affidavit or otherwise, show that the assignment to him has been in accordance with the provisions of the Act, or in what other way; if, however, he claims as assignee of an assignee, it will be sufficient for him to show that the assignment to himself was in writing, without tracing the title through the *mesne* assignees from the original author; under such circumstances the court will assume that the title is regular, until the contrary is shown (*c*); and if there has been a complete assignment, the assignor should not be made a party to the suit (*d*). Any one associated by the proprietor of a copyright with himself in an entry in the book of registry has *primâ facie* a title to sue jointly with him in a court of equity (*e*). Thus where the bill stated that one of the plaintiffs had composed a book, and that all the plaintiffs had caused the book to be printed and published for their joint benefit, and that the book had been registered by the plaintiffs as proprietors of the copyright thereof, and that the copyright had ever since remained in the

(*a*) *Redfield* v. *Myddleton*, 7 Bosw. (Amer.) 649.

(*b*) *Atwill* v. *Ferrett*, 2 Blatch. Cir. Ct. (Amer.) 39.

(*c*) *Morris* v. *Kelly* (1820), 1 Jac. & W. 481. An assignee must be registered before he can sue; *Liverpool General Brokers* v. *Commercial Press* (1897), 2 Q. B. 1. An instance has occurred in which the assignee of a copyright, to whom the assignment was made *by parol*, obtained an injunction. The distinguishing feature of that case was this, that some of the defendants had actually received the purchase-money and had permitted the plaintiffs to print and publish the work; *Longman* v. *Oxberry*, Nov. 1820, MSS. cited Godson on Patents, &c., 314; see *Gillier* v. *Snaggs*, 2 Eq. Abr. 522; 4 Vin. Abr. 273, A 4.

(*d*) *Sweet* v. *Maugham* (1840), 11 Sim. 51; 9 L. J. (N.S.) Ch. 323; 4 Jur. 456; *Colburn* v. *Simms* (1843), 2 Hare, 560.

(*e*) *Stevens* v. *Wildy* (1850), 19 L. J. Ch. 190.

plaintiffs for their joint benefit, and that the defendants had published a book in which numerous passages were copied from the plaintiffs' book; the court held, upon a motion for the injunction, that under the Copyright Act, 5 & 6 Vict. c. 45, the plaintiffs had a joint right to sue: and upon comparison of the two books, that in the defendants' book there had been such copying from the plaintiffs' book as entitled them to an injunction (*a*).

Where the plaintiff has suffered persons to publish the subject of his copyright without interposition, the court will not interfere. But this acquiescence is no proof of assignment, even if a receipt be produced for money paid for copyright (*b*).

Nature of relief usually sought and obtained.

In the majority of cases, the statement of claim prays that an account may be taken of the books printed, and of the profits thereof, from the person who has pirated from the plaintiff's works, or alternatively damages for the loss caused by the infringement, and moreover that an injunction may be issued to restrain the further sale (*c*).

Matters of evidence.

The plaintiff must of course prove that he is the author or proprietor of the work. The certificate of registration is *primâ facie* proof that the plaintiff is the proprietor (*d*). It will next be necessary to produce a copy of the work complained of, and prove the injury sustained according to the specific allegations in the pleadings; whether by printing and publishing, or by exposing to sale or hire or importing. Proof is often given that parts of the first work were used in the printing of the second, and that the alterations supplied in the MSS. were merely colourable. The prevalence of errors in the second work identical with those in the first is likewise good evidence of piracy, since it can scarcely have happened that two persons would fall into precisely the same mistakes in repeated instances. To entitle the proprietor of a book or periodical to maintain an action in respect of articles, reports, or other contributions supplied to him by persons employed and paid by him for that purpose, he must, under section 18 of the Act of 1842, prove that he has actually paid for such articles, reports, or other contributions and that they have been composed on the terms that copyright therein should belong to such

(*a*) *Stevens* v. *Wildy* (1856), 19 L. J. Ch. 190; see *Lauri* v. *Renad* (1892), 3 Ch. 402.

(*b*) But see *Dennison* v. *Ashdown* (1897), 13 T. L. R. 226.

(*c*) *Hildesheimer* v. *Dunn* (1891), W. N. 66; 64 L. T. 452; *Sweet* v. *Benning* (1855), 16 C. B. 459; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184. This *primâ facie* evidence is rebuttable; *Lucas* v. *Cooke* (1880), 13 Ch. D. 872.

(*d*) *Collingridge* v. *Emmott* (1887), 57 L. T. 864.

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proprietor (*a*). For the defendant the evidence will of course vary according to the nature of his defence.

In an action for infringing copyright airs in an opera, the defendant, to prove publication abroad, cannot ask a witness skilled in music to whom a piece of music had been shown, whether he had seen printed copies of it at Milan, without accounting for the non-production of the original prints (*b*). Nor is a statement of the same witness that he had heard the music, produced in court sung by persons in private society with printed music before them, as if singing therefrom, evidence to prove that the music so printed was the same as the music in court (*c*).

In a case of infringement of the copyright in a picture where the original picture was abroad, proof of the infringement by photographing an engraving sworn to be an exact copy of the picture, and made under the supervision of the artist, was allowed by production of the engraving by a person who had seen the original picture (*d*).

The Act 2 & 3 Vict. c. 12 imposes a penalty of £5 per copy for every omission to print the name and place of abode of the printer on the first or the last leaf of every paper or book. It is no answer, however, to an action for infringing the copyright of the work, that it was printed and published without the name and residence as required by this Act (*e*).

Effect of offer to compromise.

The evidence of an offer to compromise an action for a certain amount cannot be accepted as conclusive, or even as suggestive that such amount was the extent only to which the party so offering to compromise has been damaged or suffered injury. So where a person had offered to take £160 as the price of his right, and therefore had (it was argued) shown that he did not consider the probable harm that would accrue to him as irremediable, and consequently had no right to ask for an injunction, it was said by Lord Hatherley, then Vice-Chancellor, that that argument would not go far with the court. A person might be willing to forego his rights and so avoid litigation; but after the litigation, which he had shown himself anxious to avoid, had begun circumstances were altered, and he surely should be allowed to insist on his right to the utmost (*f*).

(*a*) *Walter* v. *Howe* (1881), 17 Ch. D. 708: *Affalo* v. *Laurence & Bullen* (1901), A. C. 17, see *ante* pp. 99 *et seq.* Three newspaper proprietors may jointly employ an author to write an article for them: *Trade Auxiliary Co.* v. *Middlesbrough, &c., Association* (1889), 40 Ch. D. 425. (*b*) *Boosey* v. *Davidson* (1849), 13 Q. B. 257.
(*c*) *Ib.* (*d*) *Lucas* v. *Williams* (1892), 2 Q. B. 113.
(*e*) *Chappell* v. *Davidson* (1855), 18 C. B. 194.
(*f*) *Ainsworth* v. *Bentley* (1866), 14 W. R. 630.

Discovery from defendant.

The court may require the defendant to disclose the number of piratical copies which he has printed, imported, or sold, the number on hand, the proceeds of sale, &c. And the plaintiff has a right to a full and particular discovery as to the original sources from which the defendant alleges himself to have drawn his work (*a*), and this notwithstanding the defendant offers to submit to an injunction, and to pay the costs, and a motion by the defendant to stay proceedings after interrogatories had been filed, and before the defendant had answered, was refused (*b*). And in a suit to restrain an infringement, a plaintiff who, in opposition to the defendant's denial of his title, has obtained an injunction, is entitled to an answer from the defendant for the purpose of having his title admitted (in case, by arrangement between the parties, the title is not established at law), and also for the purpose of having an account from the defendant of the profits made by the sale of the spurious work. The plaintiff, therefore, under such circumstances, is entitled to the costs of the suit; and if, by the refusal of the defendant to pay those costs, the plaintiff is compelled to bring his cause to a hearing, he will be entitled to the whole costs of the suit as between party and party, although at the hearing he may waive the account; and the plaintiff's equity in this respect will not be affected by his having offered to waive his right to an answer with a view to obtain terms more beneficial to himself than the court would, under any circumstances, accord to him, as for instance, with a view to receive costs as between solicitor and client (*c*).

Form of injunction.

The parts to be restrained from publication may be specified in the order, or the defendant may be enjoined from printing, publishing, selling, or otherwise disposing of any copies of the book "containing any articles or article, passages or passage copied, taken or colourably altered from" the plaintiff's book (*d*); or, "from doing any other act or thing in invasion of the plaintiff's copyright in the said" book (*e*). Or, the injunction may be directed specially against the piratical parts, and generally any unlawful copying from the plaintiff's work (*f*).

In *Dickens* v. *Lee* (*g*), where an injunction had been granted enjoining the defendant from "copying or imitating the whole

(*a*) *Kelly* v. *Wyman* (1869), 17 W. R. 399: see also *Tipping* v. *Clarke* (1843), 2 Hare, 383. (*b*) *Stevens* v. *Brett* (1874), 10 L. T. 231; 12 W. R. 572.

(*c*) *Kelly* v. *Hooper* (1840), 1 Y. & C. Ch. 197.

(*d*) *Lewis* v. *Fullarton* (1839), 2 Beav. 14; *Hogg* v. *Scott* (1874), L. R. 18 Eq. 158.

(*e*) *Scott* v. *Stanford* (1867), 36 L. J. Ch. 732.

(*f*) *Jarrold* v. *Houlston* (1857), 3 K. & J. 723, and *cf.* Seton, 6th ed. pp. 667 *et seq.*

(*g*) (1844), 8 Jur. 185.

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or any part of the plaintiff's book," Knight Bruce, V.-C., struck out "or imitating," saying there was no precedent for such words, but without expressing an opinion whether an injunction would properly go that length. It is apprehended it could not, for it must be remembered that there may be imitations which are not piratical.

As to delivery up of copies where whole work a piracy.

The court has, as has already been pointed out, power under its general jurisdiction to order delivery up for destruction of all articles created in violation of a plaintiff's right (*a*) Where a defendant may possibly sever the passages extracted from the protected work from the rest of his work he should have the opportunity of so doing. The defendant will, however, have to state on oath what copies of his work exist, and extract from those copies which are in his possession or power, and deliver up to the plaintiff for cancellation all passages copied, taken or colourably imitated from the plaintiff's book; and further the defendant may be required to produce to the plaintiff for examination the copies after the pirated passages have been extracted, and the court will give liberty for the plaintiff to apply for a further order if they are dissatisfied with the result (*b*).

Defence and particulars.

The Statement of Defence may be in the form given in Appendix D., section vi., of R. S. C., 1883. The 16th section of the Copyright Act, 1842, enacts that in actions for piracy the defendant shall give notice of the objections to the plaintiff's title on which he intends to rely; and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person whom he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when, and the place where, such book was first published; otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the

(*a*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; 48 L. J. Ch. 673: 28 W. R. 39; 41 L. T. 250. See *ante* p. 202.
(*b*) *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73.

copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication, with the title, time, and place specified in such notice.

The notice required by this section may either form part of the defence, or may be delivered separately (*a*).

In *Leader* v. *Purday* (*b*) a gentleman named Bellamy adapted words to an old air called 'Pestal,' and procured a friend of the name of Horne to write an accompaniment. The defendant, in an action for piracy of the same, gave notice of the following objections, among others: "That the plaintiffs were not the owners of the copyright; that there was no subsisting copyright in the musical publication." It was held that evidence could not be given by the defendant, *that the copyright of the air was in Horne, and not assigned by writing to Bellamy*, Horne's name not being mentioned in the objections, as required by the above section. This was decided, although the objection appeared upon the plaintiff's case.

When notice sufficient

The notice of objection is sufficient, if it allege a definite publication of the disputed work at some particular place, by some definite party, either before, or simultaneously with, the publication by the plaintiff, or with a publication in another place (*c*); but a suggestion in an affidavit filed before the date of the statement of claim on an interim injunction is not a sufficient (*d*) notice of the objection nor a compliance with section 16.

Notices of particulars not required in County Court.

In an action in the County Court for an injunction and damages for infringement, the plaintiff with his plaint filed particulars basing his copyright upon a registration on the 13th January, 1887, but after receiving from the defendants a notice of objection, filed amended particulars basing his copyright on earlier publications. The defendant applied at the trial to disallow the particulars, and the County Court Judge

(*a*) *Collette* v. *Goode* (1878), 7 Ch. D. 842; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Dicks* v. *Yates* (1881), 50 L. J. Ch. p. 813; *Coote* v. *Judd* (1883), 23 Ch. D. 727; *Hayward* v. *Lely* (1887), 56 L. T. 418.

(*b*) (1849), 7 C. B. 4.

(*c*) *Bousey* v. *Purday* (1849), 10 Jur. O. S. 1038; see *Bousey* v. *Davidson* (1849), 13 Q. B. 257; *Leader* v. *Purday*, *supra*; *Steel* v. *Benning* (1855), 16 C. B. 461; Bullen and Leake's Pleading, 5th Ed. 870, 872; and see *Neilson* v. *Harford* (1841), 8 M. & W. 806. For forms of particulars of objections, *Cocks* v. *Purday* (1846), 5 C. B. 862.

(*d*) *Hayward* v. *Lely* (1887), 56 L. T. 418.

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disallowed them as raising new and independent causes of action. The plaintiff, on the other hand, argued that the defendants had filed no proper notice of objections under section 16 of the Act. The Judge held that the provisions of section 16 requiring such notices to be given "on pleading" did not apply to the County Court which was subsequently created (*a*).

Amending notice of objection.

And on application by the plaintiff to have the notice of objections delivered with the defendant's pleas under this same section, amended, it was held that the alleged first publication having occurred abroad, and so far back as the year 1831, it was sufficient for the defendant to state the year of the first publication, and that it was not necessary that he should be bound to specify the day or month; but that he was bound to state the name of the party whom he alleged to be the proprietor or first publisher, the title of the work, the place where and the time when the first publication took place (*b*).

In *Chappell* v. *Purday* (*c*), however, the defendant was allowed to plead that the plaintiff was not the proprietor of the copyright when the books were printed. If no notice of objection, according to the statute, be given by the defendant, he will be precluded from giving any evidence in support of his case, or putting the plaintiff to the proof of his (*d*).

If a defendant does not give the notice of objections required by this section, the action has been sometimes dismissed if a defect in the registration is brought out from the plaintiff's evidence (*e*).

A plaintiff in an action to restrain the infringement of his copyright in a catalogue, put in evidence the entry of his copyright in the registry before the writ in the action was issued. On the plaintiff being cross-examined as to the validity of the registration, the objection was taken that the defendant had not raised in his pleadings any objection to the registration. In answer to that the defendant said that he had suggested the objection to registration in an affidavit filed before the date of the statement of claim, on a motion for an interim injunction. On the trial of the action it was held that though the notice was not good within section 16 of the Act, yet the case was one where the Court would allow the defen-

(*a*) *Harris* v. *Sheldon & Smart* (1889), W. N. 92, 128 : 5 T. L. R. 594.
(*b*) *Bousey* v. *Davidson*, *ubi sup.*
(*c*) (1845), 12 M. & W. 303 : *Harris* v. *Sheldon & Smart*, *ubi sup.*
(*d*) *Haycock* v. *N. of England Co-operative Society*, County Court, Manchester, 13th Oct., 1874, J. Russell, Q.C.
(*e*) *Coode* v. *Judd* (1883), 23 Ch. D. 727 : see *Cole* v. *Gear* (1887), 4 T. L. R. 246 ; but see *Leader* v. *Purday* (1849), 7 C. B. 4 ; *Collette* v. *Goode* (1878), 7 Ch. D. 842.

dant to raise the objection by amendment on terms. The terms were that the defendant was not to raise any objection to the plaintiff proving the registration made since the action was brought, or raise any objection on the ground that such registration was not made before action (*a*).

In an action for damages for an alleged infringement of the plaintiff's copyright in a song, the defendant, by his statement of defence, alleged that the song had not been registered at Stationers' Hall until the 9th of December, 1876, and added "the defendant denies that the song has been duly registered. The time of the first publication thereof is not truly entered in the register." It was held that on this pleading the defendant was only entitled to prove that the time of first publication had been untruly entered, and that he was not at liberty to prove that the name of the publisher had been untruly stated, and leave to amend was refused (*b*).

Points as to costs.

A person whose copyright has been infringed is not bound to rest satisfied with the promise of the defendant not to commit any further infringement, but he has a right to have an injunction (*c*), and is entitled to the costs of such injunction (*d*).

If the defendant do not offer to submit to the injunction and pay all the costs up to that time (*e*), or if, although he offer to submit to the injunction, he refuse to pay the costs or to give the plaintiff any of the other relief to which he is entitled, the plaintiff is entitled to bring the suit to a hearing, and will have the costs of the suit (*f*). But if the defendant offer to submit to the injunction with costs, and to give the plaintiff all the other relief to which he may be under the circumstances entitled, and no account is sought, or the account is waived, the Court, though it may give judgment in the plaintiff's favour, will not give him the costs of the subsequent prosecution of the suit up to the hearing (*g*).

The tender must include the costs of the suit up to the

(*a*) *Hayward Bros.* v. *Lely* (1887), 56 L. T. 418.

(*b*) *Collette* v. *Goode* (1878), 7 Ch. D. 842; but see *Ebrain* v. *Cohen* (1889), 41 Ch. D. 563, 566.

(*c*) *Geary* v. *Norton* (1846), 1 De G. & Sm. 9; *Losh* v. *Hague*, 1 Webs. 200.

(*d*) *Geary* v. *Norton*, *supra*.

(*e*) *Potts* v. *Lery* (1854), 2 Drew. 272.

(*f*) *Fradella* v. *Weller* (1824), 2 R. & M. 247; *Geary* v. *Norton* (1846), 1 De G. & Sm. 12; *Kelly* v. *Hooper* (1840), 1 Y. & C. C. C. 197; *Colburn* v. *Simms* (1843), 2 Hare, 561; *Jamieson* v. *Teague* (1839), 3 Jur. (N.S.) 1206; *Chappell* v. *Davidson* (1855), 2 K. & J. 123; *Burgess* v. *Hill* (1860), 26 Beav. 244; *Burgess* v. *Hately*, *Ib.* 249; *McAndrew* v. *Bassett* (1863), 33 L. J. (Ch.) 561

(*g*) *Millington* v. *Fox*, 3 M. & C. 352; *Colburn* v. *Simms*, *supra*; *Nunn* v. *d'Albuquerque* (1864), 34 Beav. 595; *Harvey* v. *Ferguson*, 15 Ir. Ch. 277; *Hudson* v. *Bennett* (1866), 12 Jur. (N.S.) 519.

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time when the tender is made (*a*), and it may be said generally that any offer the defendant may make with regard to the payment of costs must have been substantially the whole of the costs which the Court finds the plaintiff to be entitled to at the trial. Short of that the offer may be evidence of good faith, but it is not such an offer as to interfere with the ordinary course with respect to costs (*b*). If both parties are in the wrong, the one claiming more than he is entitled to claim, and the other offering less than he was bound to offer, costs will not be given to either side (*c*).

A *bonâ fide* offer from the defendants before suit to give the plaintiff all the relief to which he is entitled, and which he ultimately obtains by the suit, may be a reason, as we have seen, for depriving him of the costs of it (*d*): but in *Edelsten* v. *Edelsten* (*e*), Lord Westbury said he could not take notice of negotiations antecedent to the suit, save in case of bad faith, unless they amounted to a release or binding agreement with respect to the cause of action. A man, however, whose legal right has been invaded is under no obligation to make an application to the defendant before filing his bill for an injunction (*f*). The costs of the suit used often to be disposed of on an interlocutory application before judgment (*g*).

In *Cooper* v. *Whittingham* (*h*) Sir G. Jessel said that where a plaintiff came to enforce a legal right and there had been no misconduct on his part . . . the court had no discretion and could not take away his right to costs, and Chitty, J., took the same view in *Upman* v. *Forester* (*i*). But in *Walter* v. *Steinkopff* (*k*) Mr. Justice North said he could not understand that view, it was in the teeth of the several Orders and Act of Parliament, which say that a judge has a discretion which he is to exercise, and in the case of *The American Tobacco Co.* v. *Guest* (*l*), Stirling, J., took the same view. Mr. Justice North, considering that in the case in question the defendants had

(*a*) *Fradella* v. *Weller*, *supra*; *Geary* v. *Norton*, *supra*; *Jamieson* v. *Teague*, *supra*; *Burgess* v. *Hill*, *supra*; *Remnant* v. *Hood* (1860), 27 Beav. 74; *Moet* v. *Couston* (1863), 33 Beav. 578; *Schlesinger* v. *Turner*, 63 L. T. 764; W. N. (1890), p. 224.

(*b*) *Schlesinger* v. *Turner*, *supra*.

(*c*) *Moet* v. *Couston*, *supra*; see *Rochdale Canal Co.* v. *King* (1850), 16 Beav. 630; *Pearce* v. *Wycombe Railway Co.* (1853), 17 Jur. 660; *Ainsworth* v. *Walmesley* (1865), L. R. 1 Eq. 518.

(*d*) *Millington* v. *Fox*, *supra*; *Colburn* v. *Simms*, *supra*; *Chappell* v. *Davidson*, *supra*; *Williams* v. *Thomas* (1847), 2 D. & Sm. 29, 37; see *Woodman* v. *Robinson* (1851), 2 Sim. (N.S.) 204; *Nesbitt* v. *Berridge* (1862), 32 Beav. 282.

(*e*) (1862), 1 D. J. & S. 185, 203.

(*f*) *Burgess* v. *Hill* (1860), 26 Beav. 244; *Burgess* v. *Hately*, *Ib.* 249; *Walter* v. *Steinkopff* (1892), 3 Ch. 489; 8 T. L. R. 633.

(*g*) Morg. & Dav. on Costs, 47–62; Morg. & Wurtz. on Costs, 73–89.

(*h*) (1880), 15 Ch. D. 501.

(*i*) (1863), 24 Ch. D. 231.

(*k*) *Supra*.

(*l*) (1892), 1 Ch. 630.

been hardly dealt with by being pulled up all at once without notice for doing what they had been doing for twelve years past, decided that the defendants should pay all the costs of the action down to a certain day, and also such further costs as would have been properly incurred by the plaintiffs in proceeding upon a motion unopposed by the defendants to make the interlocutory order perpetual, leaving all other costs to be borne by the parties who incurred them.

In a case where the plaintiff after the hearing, but before judgment was delivered, became bankrupt, the bill was dismissed, but on the defendant moving that the plaintiff might be ordered personally to pay the costs, Wood, V.-C., refused to make any order, and his decision was upheld on appeal (*a*).

By the 21 & 22 Vict. c. 27, s. 2, the Court of Chancery was empowered to assess and award damages either in lieu of, or in addition to, an injunction (*b*); the Act is repealed by 46 & 47 Vict. c. 49, s. 3, but the jurisdiction appears to be retained by s. 5 (b), and at any rate the Court now has power to give alternative relief (*c*).

"Full costs."

Section 26 of the Copyright Act, 1842, provides that if in any action for infringement a verdict shall be given for the defendant, or the plaintiff shall become non-suited or discontinue his action, then the defendant shall have and recover his "full costs." This expression, however, does not mean anything more than ordinary party and party costs (*d*).

Actions to be commenced within twelve months.

All actions, suits, bills, indictments, or informations for any offence committed against the Act, must be commenced within twelve calendar months after the commission of the offence; but this limitation does not extend to any actions, suits, or proceedings commenced under the Act in respect of copies of books required to be delivered to the British Museum and the four other libraries (*e*); nor to suits in equity, nor to actions at common law for infringement (*f*). Since the first edition of this work there has been an express decision in accordance with the above view.

To what proceedings does not apply.

In *Hogg* v. *Scott* (*g*) it appears that in 1868 the defendant

(*a*) *Boucicault* v. *Delafield* (1863), 10 Jur. 1063.

(*b*) *Tinsley* v. *Lacy* (1861), 1 H. & M. 747; *Johnson* v. *Wyatt* (1863), 2 De G. J. & S. 18; *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 260; *Cox* v. *Land and Water Journal Co.* (1869), L. R. 9 Eq. 324; *Smith* v. *Chatto* (1874), 31 L. T. 775.

(*c*) *Sayers* v. *Collyer* (1885), 28 Ch. D. 103, 108.

(*d*) *Avery* v. *Wood* (1891), 3 Ch. 115. As to security for costs see *ex parte Hutchins* v. *Romer* (1879), W. N. 99.

(*e*) 5 & 6 Vict. c. 45 s. 26.

(*f*) See the principle upon which were decided the cases of *Clark* v. *Bell*, 29th Feb., 1801; Mor. Dict. of Dec., No. 3 App., Lit. Prop.; and *Stewart* v. *Black*, 9 Sess. Cas. 2nd Ser. 1026; *Hogg* v. *Scott* (1874), L. R. 18 Eq. 141.

(*g*) *Ubi sup.*

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had published the first edition of a work, and issued a second edition in 1872. The work contained matter pirated from the plaintiff's works. He also intended to publish a third edition. In August 1873, the plaintiff applied for an injunction to restrain the defendant from further publishing or selling any copies of such piratical work. One of the defences set up was that the statutory limitation applied to all actions and suits, whether for the penalties, or damages, or injunctions, and hence that the plaintiff's suit was barred by lapse of time. Vice-Chancellor Hall, however, expressed the opinion that the word "offence" was not used in the above section in the same sense as in section 15, which gives an action on the case for damages: that the limitation prescribed was intended to apply only in cases of penalties and forfeitures, that it could not operate to destroy the property secured; and that an action for damages, or a suit for an injunction might be maintained, although more than a year had passed since the wrong was done. But, however this might be, he had no doubt that the defendant could not go on committing new wrongs or offences by continually publishing and selling the piratical work, in violation of the plaintiff's right of property. The injunction was therefore granted.

It has been suggested that the period of limitation given by section 26 has been reduced from twelve months to six months by virtue of the Public Authorities Protection Act, 1893 (*a*). Section 2 of that Act repeals section 26 of the Copyright Act, 1842, so far as relates to "any proceeding to which this Act applies," and by section 1, provides a limitation of six months within which actions, prosecutions and proceedings must be taken or brought. But it seems clear that this Act only applies to actions, prosecutions, and proceedings commenced against "any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority" (*b*); and that in all other cases the old limitation of twelve months remains.

(*a*) 56 & 57 Vict. c. 61; *see Maddock* v. *Blackwood* (1898), 1 Ch. 64.
(*b*) See sect. 1.

CHAPTER VIII.

NEWSPAPERS.

PAPERS for circulating news were first used in England in the reign of Queen Elizabeth (*a*). It was not until the reign of Queen Anne that any notice appears to have been taken of them by the legislature. Newspapers.

The Acts of Parliament on the subject of the press are 36 Geo. III. c. 8; 39 Geo. III. c. 79; 51 Geo. III. c. 65; 55 Geo. III. c. 101; 60 Geo. III. & 1 Geo. IV. c. 9; 11 Geo. IV. & 1 Wm. IV. c. 73; 6 & 7 Wm. IV. c. 76; 2 & 3 Vict. c. 12; 5 & 6 Vict. c. 82; 9 & 10 Vict. c. 33; 16 & 17 Vict. c. 59. They were, with the exceptions hereafter enumerated, repealed by "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869" (the 32 & 33 Vict. c. 24).

Every person printing any paper, except bills, bank-notes, bonds, deeds, agreements, receipts, &c., or any paper printed by the authority of any public board or public officer (*b*), for profit, must keep one copy at least of such paper, and write or print thereon the name (*c*) and abode of his employer, and, if required, produce and show the same to any justice of the peace within six months next after the printing, on penalty, in case of neglect or refusal of the sum of £20 (*d*). Name and abode of printer to appear.

If any person file a bill for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it is provided by the 19th section of the 6 & 7 Wm. IV. c. 76, that it shall not be lawful for the defendant to plead or demur to

(*a*) The oldest newspaper extant is dated July 23, 1588, 'The English Mercurie, published by authoritie for the prevention of false reports.' It is among the state papers in the British Museum: Godson on Patents, &c., 219.

(*b*) 51 Geo. III. c. 65. s. 3.

(*c*) See *Bensley* v. *Bignold* (1821), 5 B. & Ald. 335.

(*d*) 39 Geo. III. c. 79. s. 29: 32 & 33 Vict. c. 24; 33 & 34 Vict. c. 99.

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such bill. He may be compelled to make the discovery required, which discovery, however, cannot be used in any proceeding against the defendant except in that for which the discovery is made (*a*).

By the 2 & 3 Vict. c. 12, s. 2, it is provided that every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall, for every copy of such paper so printed by him or her, forfeit a sum of not more than £5 (*b*).

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, is to print the following words: "Printed at the University Press, Oxford," or, "The Pitt Press, Cambridge," as the case may be (*c*).

These enactments do not extend to papers printed by the authority and for the use of Parliament nor to impressions of engravings, or the printing of the name and address or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise (*d*).

Prosecutions to be commenced within three months.

Prosecutions must be commenced within three months after the penalty is incurred; and where the penalty incurred does not exceed £20 it may be recovered before any justice of the peace for the county or place where the same may have been incurred, or where the offending party may happen to be (*e*); one moiety of such penalty is to go to the informer and the other to the Crown.

All proceedings to be conducted in

By the 4th section of the 2 & 3 Vict. c. 12, and 9 & 10 Vict. c. 33, s. 1, no action for penalties may be commenced

(*a*) See *Dixon* v. *Enoch* (1871), L. R. 13 Eq. 391; 20 W. R. 359. Actions for discovery are now practically obsolete, the effect of sect. 24, s-s. 7 of the Judicature Act being to give jurisdiction to the Court, before whom a cause or matter is pending, to order the ..n all discovery i:, aid of the claim or defence which could, before the Act, have been obtained by a bill of discovery. R. S. C. Or. xxxi. *See* Annual Practice.

(*b*) And a printer whose name does not thus appear cannot recover in an action for work and labour for printing it; *Marchant* v. *Evans* (1818), 2 Moore, 14.

(*c*) 2 & 3 Vict. c. 12, s. 3. (*d*) 39 Geo. III. c. 79, ss. 28 & 31.

(*e*) 39 Geo. III. c. 79, ss. 35, 36.

except in the name of the Attorney- or Solicitor-General in England, or the Queen's Advocate in Scotland; and every action, bill, plaint, or information which may be commenced or prosecuted in the name or names of any other person or persons, and any proceeding thereon, are thereby declared null and void to all intents and purposes (*a*).

the name of the Attorney- or Solicitor-General.

By the Newspaper Libel and Registration Act, 1881 (*b*), a register of newspaper proprietors as defined by the Act is established under the superintendence of a registrar. Section 1 of the Act defines the word "newspaper" to mean any paper containing public news, intelligence or occurrences, or any remarks or observations thereon printed for sale and published in England or Ireland periodically or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers. Also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements.

Definition of newspaper.

The word "proprietor" is defined to mean and include as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who as partners or otherwise represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein.

Definition of proprietor.

Where in the opinion of the Board of Trade inconvenience would arise or be caused in any case from the registering of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute sub-division of shares or other special circumstances), the Board may authorize the registration of such newspaper in the name or names of some one or more responsible "representative proprietors" (*c*).

Printers and publishers are to make annual returns in the month of July (*d*) according to scheduled form of —

Annual returns to be made by printers and publishers

(*a*) The title of a newspaper;

(*b*) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence;

(*a*) 32 & 33 Vict. c 24. (*b*) 44 & 45 Vict. c. 60, s. 8.

(*c*) Sect. 7.

(*d*) It will be seen that no provision is made for the immediate registration of a newspaper whose first number appears in any other month than July, and consequently a newspaper started in August may be regularly published for nearly a year before any necessity for registration arises under the Act. See, too, the 11th section as to transfer.

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and a penalty is imposed in case of omission to make the return (*a*).

Transfer of shares in newspapers.

Power is given to any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor, or any new proprietor is introduced at any time, to make a return according to a prescribed form (*b*).

Register open to inspection.

The register to be kept by the registrar is to be open to public inspection during business hours (*c*) on payment of a certain fee (*d*). The provisions of the Act as to registration of proprietors are not to apply to any newspaper which belongs to a joint-stock company incorporated under the Companies Act, 1862 (*e*).

Copyright in newspapers.

Whether copyright exists at all in the case of newspapers has been doubted by Lord Chelmsford (*f*), who referred to the language of Knight Bruce, L.J., in *Ex parte Foss* (*g*), as seeming to imply a doubt in the mind of that learned judge also whether there was such a thing as copyright in a newspaper. There cannot, however, be any doubt as to the existence of the copyright (*h*).

But there cannot be prospective copyright in a newspaper, which was the extent to which *Platt* v. *Walter* went. It is a common practice for the same proprietor to own two newspapers, one issued in the morning under one name and another in the evening under a different name, the latter consisting, in a large proportion, of news and other matter taken from the former. This is a convenient arrangement, and no difficulty is likely to arise so long as the proprietorship of both papers is in the same individual; but where the practice has been carried on for a considerable time and the proprietorship in the papers passes into different hands, difficulties are sure to arise. Thus we find in the case above referred to, where the plaintiffs were part owners of the 'Evening Mail' and the defendants part owners of the 'Evening Mail' and owners of the 'Times.' Both the 'Times' and 'Evening Mail' had originally belonged to a Mr. Walter, from whose son the plaintiffs had bought their share of the 'Evening Mail.' Ever since the papers were first published the 'Evening Mail' had been printed with the type of the 'Times' and published on its premises, but there was no express agreement that this should

(*a*) Sects. 9 and 10. (*b*) Sect. 11. (*c*) Sect. 13.
(*d*) Sect. 14. (*e*) Sect. 18.
(*f*) *Platt* v. *Walter* (1867), 17 L. T. 159. (*g*) (1858), 2 De G. & J. 230.
(*h*) *Walter* v. *Steinkopff* (1892), 3 Ch. 489; *Johnson* v. *Nevues* (1894), 3 Ch. 633; *Walter* v. *Lane* (1900), A.C. 539.

continue. Disagreements having arisen the owners of the 'Times' refused to allow the 'Evening Mail' to be printed with the 'Times'' type. The plaintiffs thereupon applied for an injunction to restrain them from preventing this. The claim was based on long user, and the plaintiffs claimed also a "share in the copyright," as they called it, of the 'Times.' By this they meant that they had the right to abstract whatever matter they chose from the 'Times' and print it in their paper. Vice-Chancellor Stuart refused the injunction, and on appeal Lord Chelmsford affirmed the decision. The court was of opinion on the one point, that the plaintiffs had no legal property in the type of the 'Times,' that user, however long continued, could not establish such a servitude over personal property, nor could even an express agreement, which would only bind those who were parties to it and would lapse on their death (*a*); and on the other point, that there could be no copyright in a non-existent thing. Copyright only accrued when the matter was actually produced. Accordingly the plaintiffs could not be entitled to a share in, nor could prescription act upon, a right which was not yet in, existence.

Coe v. Land & Water Co.

In *Coe* v. *The Land and Water Company* (*b*) it was contended that newspapers being but ephemeral productions, seldom, if ever, reprinted, could not properly be the subject of copyright. But Vice-Chancellor Malins decided otherwise, remarking that the idea of there being no copyright at all in newspaper articles was repugnant to common sense and common honesty. At the same time the Vice-Chancellor decided that it was not necessary to register a newspaper under the 5 & 6 Vict. c. 45. In an earlier edition of this work the decision was styled a somewhat remarkable one. The learned Vice-Chancellor considered that the object of the 5 & 6 Vict. c. 45, in requiring registration was to let the public know when the copyright in a work would expire. Registration was clearly unnecessary for this purpose in the case of a newspaper, which, therefore, was not within the policy of the Act; neither was it within the words. By the 2nd section "book" was to include "every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published." A newspaper, he considered, was not within any one of those words; it was a well-known species of publication,

(*a*) See *Glassington* v. *Thwaites* (1822), 1 Sim. & Stu. 124.
(*b*) (1869), 18 W. R. 206; L. R. 9 Eq. 324; 39 L. J. (Ch.) 152; 21 L. T. (N.S.) 548. *Kelly* v. *Hutton* (1868), L. R. 3 Ch. App. 703.

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and would have been inserted by name if intended to be included (*a*).

The decision has not been followed, and in *Walter* v. *Howe* (*b*), Sir George Jessel, M.R., held that a newspaper was within the Act and required registration.

A newspaper is clearly "a book" within the Copyright Act, 1842, and all the provisions of that statute concerning books apply also to newspapers so far as the circumstances allow. They must therefore be registered at Stationers' Hall. And as each single number of a newspaper is a book within the Act, a separate registration of a single number *may* be made (*c*). But the 19th section applies more particularly to the registration of periodical publications, so that registration of the first number will protect all future numbers (*d*). As we have seen in the case of books, non-registration does not affect the copyright, but is a condition precedent only to suing. Consequently it is not necessary to register before infringement of copyright has taken place. It is sufficient if the registration is made at any time after publication and before the action for infringement of copyright is brought. An action then lies for infringement occurring both before and after registration.

Points as to registration.

The main points as to registration have been already dealt with under the head Registration, and these points we may briefly summarize here thus:—

1. Registration of a newspaper or other periodical must be made *after* publication, registration before publication is invalid.
2. Registration in order to apply to the whole series must be of the first number, or of the first number published after the passing of the Copyright Act, 1st July, 1842.
3. Registration of any single number will be effectual to protect the contents of that number.
4. Registration to be effectual must be of the exact title of the newspaper or other periodical, the exact date of its first publication—that is of the day of the month as well as month and year.

(*a*) (1869), 18 W. R. 206; L. R. 9 Eq. 324; 39 L. J. (Ch.) 152; 21 L. T. (N.S.) 518; *Kelly* v. *Hutton* (1868), L. R. 3 Ch. App. 703.

(*b*) (1881), 17 Ch. Div. 708; *Cate and others* v. *The Devon and Exeter Constitutional Newspaper Co. (Limited)* (1889), 40 Ch. D. 500; 5 T. L. R. 229; *The Trade Auxiliary Co.* v. *Middlesbrough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425; 5 T. L. R. 168, 251; *Walter* v. *Lane* (1900), A.C. 539.

(*c*) *Dicks* v. *Yates* (1881), 18 Ch. D. 76; *Johnson* v. *Veevers* (1891), 3 Ch. 663; *Walter* v. *Lane* (1900), A.C. 539.

(*d*) *Bradbury* v. *Sharp* (1891), W. N. 143.

5. Where the proprietor of the newspaper and the publisher are different persons, the names of both must be registered.
6. Where the proprietors or publishers are a firm, either the names of all the partners or the partnership name may be registered.

A case which may be regarded as a leading case on registration is that of *Dicks* v. *Yates* (*a*). In this case the action was brought by the proprietor of a journal called 'Every Week' against the proprietor of the 'World' for infringement of copyright. The infringement complained of was in respect to a novel, 'Splendid Misery,' which was being published in the plaintiff's journal in weekly instalments, and one of the objections taken by the defendant was that there was no proper registration. On the part of the plaintiff it was proved that there had been two registrations. The first registration was of the journal itself, 'Every Week,' and this had been made before the first number of that publication had appeared. The second was of the proprietorship of the novel. In it the date given as the day of first publication was the date of the issue of the journal which contained the first instalment of the novel. This registration was made after all the work had been published. It was held by the Court of Appeal that the registration of the journal having taken place previous to publication was bad, but that the registration of the novel, though it took place after the whole story had appeared, was good. Jessel, M.R., in delivering judgment, said: "The first registration is a registration of 'Every Week.' That appears to be a bad registration, because it was made before that periodical was published at all. But there is a second registration, and the second registration is of the first part of 'Splendid Misery,' and is in every respect correct, unless we accede to the argument that the registration is invalid because at the time the first part was registered the second and subsequent parts had been published. I am quite unable to follow that argument. The registration informs the public of everything that the public could have any possible desire or right to know. It cannot be less a registration of the first part because the other parts had been published. Each part may be registered separately, each part is, according to the definition in the Act of Parliament, a book. It appears to me there is no tenable objection to the second registration."

Dicks v. *Yates*.

It follows from a newspaper being a "book" within the

Copies of newspapers

(*a*) (1881), 18 Ch. D. 76.

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for public libraries.

meaning of the Copyright Act, 1842, that the publisher is bound to deliver a copy of every issue at the British Museum, and if demanded copies must be delivered at Stationers' Hall for the Bodleian, the University Library, Cambridge, the Advocates' Library, Edinburgh, and the Library of Trinity College, Dublin. The penalty for non-compliance with the Act in this respect is £5, and the value of the copy not delivered.

Difference between registration under copyright and newspaper acts.

Registration under the Copyright Acts for the purpose of suing for infringement of copyright must not be confounded with the registration of the newspaper under the Newspaper Libel and Registration Act of 1881, which has nothing whatever to do with the copyright (*a*).

Consequently the proprietor of a newspaper registered as a serial publication under the Copyright Act, 1842, can sue in respect of his copyright in matters published in his paper, though neither the name of the proprietor nor the title of the paper is registered under the Newspaper Libel and Registration Act, 1881. And an injunction was granted to three plaintiffs, the proprietors of three several serial publications registered under the Copyright Act, to restrain the infringement of their joint copyright in matter printed in all three publications, though the printed matter was copied not from either of the three publications, but from a reproduction of the same matter issued in another form by the authority of one of the plaintiffs without further registration under the Copyright Act (*b*).

Illustrations.

A coloured plate headed "Supplement" to a periodical registered as a newspaper and referred to as "Our illustration for this week," was held to be part of the newspaper as regards copyright, though not physically attached to the newspaper (*c*); but the registration of the newspaper does not protect illustrations, the copyright in which belongs to another person not the proprietor of the newspaper (*d*).

Newspaper articles.

In a case which came before Lord Curriehill, in November 1875, wherein Mr. Charles Reade brought an action against the 'Glasgow Herald' for damages for infringement of copyright by the publication of his sketch called 'A Hero and Martyr,' which appeared originally in the 'Pall Mall Gazette,'

(*a*) A large number of magazines, story papers, papers composed of scraps of miscellaneous reading, and the like, though issued periodically, are not "newspapers" under this Act, and the authors or proprietors are therefore under no obligation to register, nor can they claim the protection afforded by the Act.

(*b*) *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500; 58 L. J. Ch. 288; 60 L. T. 672; 37 W. R. 487; 5 T. L. R. 229; *The Trade Auxiliary Co.* (*Limited*) v. *Jackson* (1887), 4 T. L. R. 130.

(*c*) *Comyns* v. *Hyde* (1895), W. N. 9; 72 L. T. 250.

(*d*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

and which the 'Herald' had transmitted daily from London by its special wire for the next day's paper; his Lordship, in giving judgment, so far as concerned the plea of irrelevancy set up by the defendants against the plaintiff's action, said: "The defenders maintain that as the London newspaper is not registered as copyright, they are entitled to copy and publish in their journal anything which appears in it, and that even if its proprietor might have a title to sue for damages for such appropriation of matter published, the author, who has been paid by the proprietors for the right to publish such matter, has no action against the journal so appropriating. This raises a question of great importance both to authors and journalists. I am of opinion that the defence is not relevant, and that the counter-issues proposed by the defenders must be disallowed. I know of no principle or authority holding that the author loses his copyright by permitting third parties to print and publish his work. To hold such a doctrine would, I think, be analogous to holding that a patentee loses his monopoly on licensing a third party to manufacture his patented invention" (*a*).

Copyright in news.

There can be little doubt but that there is copyright in the literary form given to news—not in the substance of the news itself, but in the form in which it is conveyed, and this even where it consists of a mere statement or summary, and the information is with respect to the current events of the day (*b*). As to what is known as a "descriptive report," whether of the proceedings in a law court or Parliament, or at any public meeting, there can be no doubt that copyright attaches. One newspaper cannot legally use the telegrams sent to another, but we are not able to go so far as to admit copyright in the substance of the news as distinguished from the form of language by which that substance is conveyed.

Press agencies.

Press agencies have received protection in two recent cases. In *Exchange Telegraph Co.* v. *Gregory and Co.* (*c*) the plaintiffs, under a contract with the committee of the London Stock Exchange, obtained valuable information as to the prices of stocks and shares from time to time during the day. This information the plaintiffs handed on to their subscribers by means of tape machines, the subscribers expressly agreeing not to sell or communicate to non-subscribers the intelligence thus supplied to them. The defendants had been at one time

(*a*) See *The Trade Auxiliary Co. (Limited)* v. *Jackson*, *supra*.
(*b*) Per North, J., *Walter* v. *Steinkopff* (1892), 3 Ch. 489, 495.
(*c*) (1896), 1 Q. B. 147; *Gilbert* v. *Star Newspaper Co.* (1894), 11 T. L. R. 4.

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subscribers of the plaintiffs', but the latter had recently refused to continue them as such, and they had succeeded in surreptitiously obtaining the information from another subscriber, and posted the information thus received in their offices. The Court held that the plaintiffs had a right of property at common law in the information, and were entitled to an injunction restraining the defendants from infringing their copyright and from continuing to induce any subscriber of the plaintiffs' to supply them with the information in breach of his contract with the plaintiffs.

This decision was followed in the case of *Exchange Telegraph Co.* v. *Central News* (*a*), where an injunction was sought to restrain the defendants from improperly copying information as to the results of horse races at Manchester, collected by the plaintiffs and communicated to the plaintiffs' subscribers, and for communicating the information so copied to the defendants' subscribers. It was sought to distinguish this case from the case of *Exchange Telegraph Co.* v. *Gregory and Co.*, on the ground that the result of a horse race is public property, but Mr. Justice Stirling refused to acknowledge the distinction. "The information," he said, "was not made known to the whole world; it was, no doubt, known to a large number of persons, but a great many more were ignorant of it. By the expenditure of labour and money the plaintiffs had acquired this information, and it was, in their hands, valuable property in this sense—that persons to whom it was not known were willing to pay, and did pay, money to acquire it." An injunction was granted.

Racing tips.

With these cases must be compared the case of *Chilton* v. *Progress Printing Co.* (*b*). There the plaintiff, who was the publisher of a registered weekly periodical, inserted each week, under the title of 'One Horse Selections,' a list of horses which he expected to win at races in the ensuing week. The defendants published each day at race-meetings a sheet or card giving, under the title, 'The Specials, One Horse Finals,' a list of horses which the plaintiff and other sporting authorities had selected as likely to win in races on that particular day, with the names of those who had selected them. The Court of Appeal held, affirming Kekewich, J., that the announcement of the horses which the plaintiff had selected as winners was not in the nature of a literary composition which could be protected under the Copyright Acts, and that the defendants had not infringed the copyright in the plaintiffs' periodical.

(*a*) (1897), 2 Ch. 18.

(*b*) (1895), 2 Ch. 29.

Reports of speeches.

It has now been decided, in accordance with the opinion expressed in the last edition of this work, that a shorthand reporter has copyright in his verbatim report of a public speech (*a*). In the case which decided this, the reports in question were of certain speeches of Lord Rosebery, in which Lord Rosebery did not assert any copyright, and the infringement complained of was the publishing of the entire speeches; but no doubt in such cases considerable freedom of quotation will be permitted.

Articles

The proprietor of a newspaper who has employed and paid a writer of articles appearing in it can, upon registration, restrain any other person from publishing such articles for twenty-eight years, but he is not entitled to publish the articles separately without the consent of the writer. A reprint of the original issue will not be regarded as a separate publication, but republishing an article in any other form would amount to such. The question came before the court in a case (*b*) where the plaintiff was the writer of a novel which had appeared in the defendant's paper, the 'London Journal.' The defendant began the issue of what was called "supplementary numbers," which could be bought along with or separate from the current numbers. They were composed of stories and other matter which had previously appeared in the 'London Journal.' The plaintiff's story appearing in these supplementary numbers, he applied for an injunction on the ground that this was a separate publication of it. Stuart, V.-C., held that he was entitled to the relief sought. The Vice-Chancellor considered that publishing separately must mean separately from something. "What," said he, "is that publishing which the Act of Parliament says shall not be separately made? It must be the publishing of the part or portion separately from that which has been before published" (*c*).

During the twenty-eight years after publication of an article in a newspaper, the right of the author is simply to prevent a publication of the matter separately, and this right he has independent of any registration. Upon the expiration of the twenty-eight years the copyright reverts to the author for the remainder of the full term of copyright.

This is the result of the absence of any agreement between the parties, and it must be remembered that under the

(*a*) *Walter* v. *Lane* (1900), A. C. 539; 69 L. J. Ch. 699; 81 L. T. 571; 48 W. R. 228.

(*b*) *Smith* v. *Johnson* (1863), 33 L. J. Ch. 137; *Johnson* v. *Newnes* (1891), 3 Ch. 663.

(*c*) See, too, *Mayhew* v. *Maxwell* (1860), 1 John. & Hem. 312.

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18th section of the Act of 1842, the author may reserve to himself the separate right of publication even during the period of twenty-eight years, or he may agree to the vesting of the whole of the copyright in the proprietor of the newspaper absolutely.

International provisions as to newspapers.

Article VII. of the Berne Convention, as modified by the Additional Act of Paris 1896, provides that serial stories, including tales, published in newspapers or periodicals of one of the countries of the Union, may not be reproduced, in original or translation, in the other countries, without the sanction of the authors or of their lawful representatives. This stipulation is to apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited. In the case of periodicals it is to suffice if such prohibition be indicated in general terms at the beginning of each number. In the absence of such prohibition, such articles may be reproduced on condition that the source is acknowledged. The prohibition contained in this Article does not, however, apply to articles or political questions, to the news of the day, or to miscellaneous information.

Property in letters, &c., sent to newspapers.

It may be mentioned here that letters and other manuscripts sent to the editor of a newspaper, as agent for the proprietor are the property of the latter, and if the editor after ceasing to be editor attempts to use them for his own purposes he will be restrained on the application of the proprietor, and be compelled to hand over such letters or other manuscripts (*a*).

There is no obligation on the part of the proprietor of a newspaper to insert or to preserve any manuscript sent to him uninvited, and if the manuscript be lost or destroyed, the author cannot recover for its value. Of course, if an editor or proprietor undertook to return unaccepted communications the case would be different.

Alterations in communications made to newspapers.

Difficulties sometimes arise by reason of alterations made in the matter communicated by correspondents and others to newspapers. The rule may be taken to be as follows: Where the author's name appears, any alterations of a nature which may affect the credit or the literary reputation of the author would be illegal, and an injunction might be obtained to restrain the publication (*b*). Of course, if the communication,

(*a*) *Hogg* v. *Kirby* (1803), 8 Ves. 215.
(*b*) But see *Lee* v. *Gibbings* (1892), 9 T. L. R. 773; Athenæum, 13th August, 1892.

though signed, contained any matter of an objectionable or offensive description this might be omitted, but the insertion of new matter which would have the effect of distorting the writer's meaning would not be permissible. In *Archbold* v. *Sweet* (*a*), where the plaintiff had written a law book on the Law of Pleading and Evidence in Criminal Cases, and the defendant, who had acquired the copyright, brought out a new edition by another person without a statement appearing that it was so edited, and in this edition were several serious errors which were likely to prove prejudicial to the author's reputation as a legal writer, the court considered the publication a libel on the author. So where an application was made for an injunction to restrain the defendants from advertising the plaintiff's name in connection with the representation of an opera called 'Les Brigands,' and it appeared that the defendants had inserted into Mr. Gilbert's version of the libretto two songs which were not written by him and had omitted a solo by him, Mr. Justice Denman, in delivering judgment, said: "He considered what had been done did not justify the granting of an interlocutory injunction unless it had been done in bad faith, or the acts had been of such a kind as to injure the reputation of the plaintiff. If the songs had been scandalous or indecent, there would have been a strong ground for the court interfering. There was nothing of the kind here, only advertisements attributing to Mr. Gilbert what was not his work, but only to a very small extent. . . . He considered it too strong a measure to hamper this performance by an interlocutory injunction where no substantial injury had been done, and no substantial injury was likely to be done to Mr. Gilbert." On appeal this decision was substantially affirmed (*b*).

As to unsigned communications, the right of the editor to alter seems to be unlimited. The author here can suffer no injury in reputation, the "custom of the trade" in this respect is well known and must be deemed to be known to the author (*c*).

(*a*) (1832), 5 C. & P. 219.

(*b*) *Gilbert* v. *Boosey & Co.*, Times, 21 Sept. 1889; L. T. 28 Sept. 1889. *Lee* v *Gibbings* (1892), 8 T. L. R. 773, where the defendant published an imperfect edition of a work of the plaintiff of which the assignor of the copies to the defendant owned the copyright and on the plaintiff applying to restrain him, it was held that the plaintiff's remedy (if any) was an action for libel.

(*c*) In a recent case where the plaintiff had sent an account of an incident which he had witnessed to a newspaper for insertion amongst the general news, and for which insertion he had been paid, the sub-editor of the newspaper had made alterations in the plaintiff's copy, by curtailing the account and improving its style. It was held that the sub-editor, and not the plaintiff, was the "author" of the

Copyright in a newspaper included in the term "goods and chattels" in the Bankruptcy Act.

The copyright in a newspaper was held to be included in the words "goods and chattels," in the 125th section of the Bankruptcy Law Consolidation Act, 1849.

The registered proprietor of a newspaper mortgaged the copyright of the newspaper, and also the type and machinery used in printing it, to the petitioner. The proprietor remained in possession and no change was made in the registration. Afterwards the sheriff seized the type and machinery under a judgment obtained by a creditor. While he was in possession the proprietor filed a declaration of insolvency and was made bankrupt. It was held on a petition by the mortgagee to have the benefit of his security, that the type and machinery, having been seized by the sheriff, were not in the "order and disposition" of the bankrupt at the time of the bankruptcy, but that the copyright of the newspaper could not be seized by the sheriff, and therefore remained in the order and disposition of the bankrupt as registered proprietor (*a*). In thus deciding, Turner, L.J., said: "The case in the argument before us was very properly divided into two considerations—first, as it affects the newspapers, and, secondly, as it affects the plant. As to the newspapers, it was, in the first place, contended that they are not goods and chattels within the meaning of the 125th section of the Bankrupt Act, which provides for goods and chattels of which the bankrupt is reputed owner passing to the assignee. It was said that the right in the newspaper is a mere right to publish the paper under that name, and that such a right could not be considered as goods and chattels within the meaning of the Act. But, to say nothing of the copyright in the newspapers, which undoubtedly exists, the right to publish the newspapers is a right to which an interest is attached. It is a right protected by courts of law and by courts of equity, and therefore a proprietary right; and the statutes—the very Newspaper Acts on which the argument before us proceeds treat the matter as a matter of property and as being a proprietary right. I feel, therefore, that the property in these newspapers must be considered as goods and chattels within the meaning of the Bankrupt Act. These words, 'goods and chattels,' are words of very extensive signification, and undoubtedly comprise both property tangible and

newspaper paragraph, and that the plaintiff could not complain of its piracy by another newspaper; but the decision is difficult to follow. *Springfield* v. *Thame* (1903), 89 L. T. 242; 19 T. L. R. 650.

(*a*) *Ex parte Foss* (1858), 6 W. R. 417; 2 De G. & J. 230; *Langman* v. *Tripp* (1805), 2 Bos. & Pul. (New R.) 67; 9 R. R. 617; see also *Kelly* v. *Hutton* (1868), L. R. 3 Ch. App. 703.

property which is not tangible. If there had been any doubt in my mind on that point, it would have been removed by the case of *Longman* v. *Tripp* (*a*), which seems to me to be a decisive authority upon the subject, and to be well founded in point of law. The case was argued further as to the question of the copyrights on this ground—it was said that the Newspaper Acts were Acts that were merely passed for fiscal purposes; that they had nothing to do with the rights of property, and therefore could not be considered as at all affecting the question whether the property was in the nature of goods and chattels within the meaning of the Bankrupt Act. But the case of *Longman* v. *Tripp* governs that point also; and independently of the case of *Longman* v. *Tripp* I think that the argument derived from the newspaper statutes is not well founded: for whether these statutes are for fiscal purposes or not, they at all events furnish the means by which the ownership of the property may be made known to the world. The declarations which are made under the Newspaper Acts are *indicia* of the property, and where such *indicia* exist I apprehend they must be attended to for the purpose of taking the property out of the disposition of the bankrupt, and removing them out of the operation of the reputed ownership clauses. The declaration is evidence of the ownership, and what may be effectual to remove that evidence must be resorted to."

Mortgage of share of newspaper not assignment of copyright requiring registration.

A mortgage of a share in a newspaper and the copyright and right of publication thereof, and all profits arising therefrom, is not an assignment of copyright which requires registration at Stationers' Hall, but merely an assignment of a chattel interest in the publishing adventure, which derives no additional efficacy from the registration (*b*).

During the progress of a suit instituted by Mr. Beeton against Mr. Hutton in reference to the proprietorship of the 'Sporting Life,' in which it was ultimately decided that the parties were entitled in equal shares, Mr. Beeton assigned by way of mortgage his share in the newspaper "and the copyright and right of publication thereof and all profits arising therefrom," to Messrs. Wrigley and Son, the assignment reciting certain chancery proceedings, and containing a power of sale.

Mr. Beeton subsequently mortgaged this same share to his partner Mr. Hutton, to secure two sums of £2000 and £512.

(*a*) (1805), 2 Bos. & P. N. R. 67.
(*b*) *Kelly* v. *Hutton* (1368), L. R. 3 Ch. App. 703; 38 L. J. (Ch.) 917; 19 L. T. 228.

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with interest at $7\frac{1}{2}$ per cent.; the former sum being the amount Beeton had been overpaid in a settlement of accounts with Hutton, the latter being the balance of Beeton's purchase-money for his moiety of the newspaper. Messrs. Wrigley and Son registered the assignment to them at Stationers' Hall, under the provisions of the Copyright Act, and subsequently sold the mortgaged share to the plaintiff Kelly, who filed a bill for a declaration that he was entitled to a moiety of the newspaper. Both Wrigley and Son and the plaintiff had permitted the newspaper to be carried on as formerly by Beeton and Hutton. It was held by the Lords Justices that the plaintiff could only take Beeton's share in the newspaper subject to the equities subsisting between the parties. "Many points have been raised before us," said Wood, L.J., "as regards the property which was the subject of the mortgage to Wrigley and Son. . . . . It appears to us that Beeton and Hutton were engaged in a joint adventure, namely, the publishing of the paper in question. Capital was required for the adventure, and the co-partners or co-adventurers possessed leasehold premises and type, and other chattels necessary for carrying it on. The mortgage to Wrigley and Son assigned to them Beeton's share in the newspaper, whatever it might be, and all profits belonging thereto or arising therefrom. In the habendum the deed speaks of the copyright of the newspaper, and the right of continuation and publication thereof. Now it appears to us that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication; and that this right is a chattel interest capable of assignment was held in *Longman* v. *Tripp* (*a*), and *Ex parte Foss* (*b*). The mortgage, then, to Wrigley and Son was that of Beeton's share of a chattel, which formed the principal subject of the co-adventure between Beeton and Hutton. Considerable stress has been laid in argument, on the part of the appellants, on the necessity of notice being given of such an assignment, either by direct notice to Hutton, or by an entry at the Inland Revenue Office; and much controversy has arisen in evidence as to whether Hutton had or had not in fact such notice previously to the 9th of March, 1866. The entry of their mortgage by Wrigley and Son at Stationers' Hall was clearly futile; but we do not pause to consider the question further, because it is clear on the face of their mortgage deed that Wrigley and Son

(*a*) (1815), 2 Bos. & P. 67; 9 R. R. 617.
(*b*) (1858), 2 De G. & J. 230; *Bradbury* v. *Dickens* (1859), 27 Beav. 53.

were aware of the litigation between Beeton and Hutton. They allowed the joint adventure to be worked jointly, whether with or without notice, and it is impossible that they can now take to themselves the subject of that adventure and the profits arising therefrom without being subject to every equity of the co-adventurer. A judgment creditor in execution against one partner, his debtor, takes only the interest of the debtor, subject to his co-partner's equities; and Wrigley and Son could not claim the asset without satisfying in the first place the lien of £512 for the unpaid purchase-money of Beeton's moiety, nor without satisfying the balance of accounts due from Beeton to his co-adventurer Hutton. The lien of Hutton as *quasi* partner in the adventure must be satisfied before the subject-matter of the adventure can be passed over to any person claiming under an assignment from Beeton; and this lien must continue so long as Wrigley and Son, as the assigns of Beeton by way of mortgage, allow the business to be carried on in co-partnership by Beeton and Hutton. Irrespective of the doctrine of notice, they cannot take the benefit of Hutton's capital in carrying on the concern (whether they have given him notice or not) and then ask to have the share of Beeton in the chattel, and still less in the profits of the concern, handed over to them without first satisfying the lien of the co-adventurer for what may be due to him on taking the accounts of the adventure. The same reasoning applies to the plaintiff as purchaser. His letter of the 27th of December, 1866, to Hutton the elder, set out in the amended bill, shows that he, at least up to that time, acquiesced in the arrangement under which the newspaper was to be carried on. In fact, having acquired the interest of Beeton in the newspaper, his mortgagees allow Beeton to conduct the business, and he must be taken to act as their agent and on their behalf. They do not advance any capital, and ask no question as to how it is to be provided. They must therefore take the business as they found it, at least up to the time of the actual exclusion of the plaintiff by Hutton from the concern, and even after that time profits cannot be claimed without making all just allowances in respect of such moiety. Hutton, therefore, wholly irrespective of his mortgage of the 9th of October, 1866, would be entitled to a lien on Beeton's share in the newspaper for £512, the unpaid purchase-money. He would also, we think, be entitled to the balance on the account settled on the 9th of March, 1866, with Beeton (which account came down to the 30th of September, 1865), and to the £2000 due to Hutton as the result of that account

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and the arrangement subsequent on it. We think, also, that interest at the rate of $7\frac{1}{2}$ per cent. per annum must be allowed on those two sums: for Hutton was clearly entitled to decline carrying on the business, whether with or without the knowledge of Wrigley and Son's mortgage, except on the terms of being allowed interest on his capital. It is in fact advanced to the plaintiff. . . . . As to the whole case, therefore, we conclude that the plaintiff has become entitled to the interest of Beeton in the newspaper. We see no reason why that interest should not be dealt with as on former occasions, by directing the defendants to concur in procuring the plaintiff's name to be registered at the office of Inland Revenue as such owner, subject to the lien before mentioned" (*a*).

No copyright in title of newspaper.

There is no copyright, strictly speaking, in the title of a newspaper, and the registration of a name at Stationers' Hall does not confer any exclusive right to the user. The right to the exclusive use of any title may, however, be acquired by "user and reputation." It then becomes a property which the Courts will protect. The use confers the right, not registration. This is well illustrated by the case of *The Licensed Victuallers' Newspaper Co.* v. *Bingham* (*b*). The plaintiffs had, on the 3rd February, published the first number of a newspaper called the 'Licensed Victuallers' Mirror.' On the next day they registered as the proprietors at Stationers' Hall, and duly deposited copies at the British Museum. They had previously to publication advertised their intention of starting a newspaper, but had not mentioned its name. Three days later, on the 6th of February, the defendant published the first number of another paper under the same title, which he registered at Somerset House and Stationers' Hall. Thereupon the plaintiffs applied for an injunction to restrain the defendant from publishing a newspaper under that name or any other name so closely resembling it as to mislead the public. The sales of the plaintiffs' paper before the issue of the defendant's were very small. It was proved also that the defendant had previously to the issue of the plaintiffs' paper registered at Stationers' Hall some twenty-eight newspaper titles, all beginning 'The Licensed Victuallers',' but 'The Licensed Victuallers' Mirror' was not among them. It was held that the plaintiffs were not entitled to an injunction on the ground that the plaintiffs' paper was not an article known in the market, or having any reputation which could induce the public to buy

(*a*) *Kelly* v. *Hutton* (1868), L. R. 3 Ch. App. 703; 38 L. J. (Ch.) 917; 19 L. T. 228.
(*b*) (1888), 38 C. D. 139.

the defendant's paper as being that of the plaintiffs', the mere registration in itself giving no exclusive right to the names, which right could only be acquired by user and reputation. On an appeal this decision was affirmed (*a*).

Wrongfully assuming the name of newspaper.

Where the name of a newspaper is taken for the purpose of deceiving the public and supplanting the goodwill of the original newspaper, an injunction will be granted (*b*); and the publication of a magazine in the name of one who no longer authorizes it will likewise be restrained (*c*).

Where part only of title taken.

Where the property in the first title has been duly acquired and a part only of that title is taken, that part must be so like the title of the first as to be calculated to deceive the public, and there must be reason to suppose that the first newspaper will suffer damages before the court can be successfully required to move.

The law on this point is perhaps best illustrated by the case of *Borthwick* v. *The Evening Post* (*d*). The plaintiff was the owner of the 'Morning Post.' The defendants were a joint-stock company which owned an old-established paper called 'Daily Recorder of Commerce.' In December 1887, they announced their intention of starting a new evening paper, to be called the 'Evening Post," with which the 'Daily Recorder' would be incorporated. Thereupon the plaintiff applied for an injunction to restrain the defendants from publishing a newspaper under that name or under any other name of which the word 'Post' formed part. The first number of the 'Evening Post' was published on the 21st December, 1887. The words 'The Evening Post' were printed at the head of the paper in old English type, and underneath in smaller type were printed the words "With which is incorporated the 'Daily Recorder.'" It appeared that the new paper consisted of four pages, the 'Morning Post' of eight. The 'Evening Post' had no advertisements on the front page; the front page of the 'Morning Post' consisted entirely of advertisements. The price of both papers was the same. The placards issued by the two papers were printed in different colours. It was given in evidence by the plaintiff that twelve persons had called at the office of the 'Morning Post' to ask for copies of the 'Evening Post.' The defendants put in evidence to show that many London and

(*a*) See further *Dicks* v. *Yates* (1881), 18 Ch. D. 76.
(*b*) *Bell* v. *Locke*, 8 Paige (Amer.) 75; see *Snowden* v. *Noah*, Hopk. (Amer.) 347.
(*c*) *Hogg* v. *Kirby* (1803), 8 Ves. 215.
(*d*) (1888), 37 Ch. D. 449; *Walter* v. *Emmott* (1885), 54 L. J. Ch. 1059; *Walter* v. *Head* (1881), 25 Sol. J. 757; *Cowen* v. *Hulton* (1882), 46 L. T. 897; *Reed* v. *O'Meara* (1888), 21 L. R. Ir. 216. See *ante* p. 64 *et seq.*

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provincial papers had had and some still had the word "Post" as part of their title. Mr. Justice Kay held that the defendants' paper and the circumstances connected with its issue were such as to deceive the public and damage the plaintiff, and he therefore granted an injunction. The Court of Appeal, however, reversed the decision, holding that though the defendants' conduct was calculated to deceive and had deceived the public, still there was no evidence that the plaintiff had suffered any damage hitherto, and no likelihood that he would suffer any in the future through the deception. They based this conclusion chiefly on the ground that as the one was a morning and the other an evening paper, there could be no real competition between them.

CHAPTER IX.

CROWN COPYRIGHT.

Prerogative copyright.

The prerogative copyrights of the Crown constitute a peculiar branch of literary property which has given rise to much controversy.

The sovereign's prerogative in granting letters patent for the privilege of printing prerogative copies, as they are called, is said to embrace the English translation of the Bible, the Book of Common Prayer, the statutes, almanacs, and the Latin grammar.

The validity of this privilege has been questioned on the ground that grants of this exclusive nature tend to a monopoly. They contribute forcibly to enhance the prices of books, to restrain free trade, to discourage industry, and by discountenancing competition they serve to render the patentees careless and remiss in their duty. Notwithstanding, it must be admitted that the sovereign has a peculiar prerogative in printing, which has been vindicated, allowed, and maintained ever since the introduction of printing.

Nature of the right.

The right is said to be founded on grounds of public policy. Lord Mansfield considered it as merely a modification of the general and common right of literary property; and from the cases which had been decided in favour of the particular copies, he inferred, as a necessary consequence, the existence of the general right. They rested upon property arising from the king's right of original publication. The copy of the Hebrew Bible, of the Greek Testament, or of the Septuagint, did not belong to the king,—it was common; but the English translation he bought, and, therefore, it was concluded to be his property.

Printing, on its first introduction, was considered, as well in England as in other countries, to be a matter of state. The quick and extensive circulation of sentiments and opinions which that invaluable art produced could not but fall under the grip of government, whose strength was to some extent

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based upon the ignorance of the people governed. The press was, therefore, wholly under the coercion of the Crown, and all printing, not only of public books, containing ordinances, religious or civil, but of every species of publication whatsoever, was regulated by the king's proclamations, prohibitions, charters of privilege, and, finally, by the decrees of the Star Chamber. After the demolition of that odious jurisdiction (*a*), the Long Parliament, on its rupture with Charles I., assumed the power which had previously existed solely in the Crown. After the Restoration, the same restrictions were re-enacted and re-annexed to the prerogative by the statute 13 & 14 Car. II., and continued down, by subsequent Acts, until after the Revolution. The expiration of these disgraceful statutes, by the refusal of Parliament to continue them any longer, formed the great era of the liberty of the press in this country, and stripped the Crown of every prerogative over it, except that which, upon just and rational principles of government, must ever belong to the executive magistrate in all countries, namely, the exclusive right to publish religious or civil constitutions, in a word, to promulgate every ordinance by which the subject is to live and be governed. These always did belong, and from the very nature of civil government always ought to belong, to the sovereign, and hence have gained the title of "prerogative copies" (*b*).

The Bible and Book of Common Prayer (*c*).

The Bible and Common Prayer Book.

For two hundred years and more the kings have in England granted patents to their printers (*d*). From the time of Henry VIII. different persons have enjoyed, by letters patent, the privilege of printing prerogative copies to the exclusion of all other persons.

These patents have, from time to time, come under the consideration of the courts, and the judges have been invited to settle their limits. Many have given it as their opinion, that the prerogative is founded on the circumstance of the translation of the Bible having been actually paid for by King James, and its having thus become the property of the

(*a*) "Where change of fav'rites made no change of laws,
And senates heard before they judged a cause" (?)—JOHN.

(*b*) Lord Erskine's Speeches, vol. i. p. 40, by Ridgway.

(*c*) See *Mayo* v. *Hill*, cited 2 Show. 260; *King's Printer* v. *Bell*, Mor. Dict. of Dec. 19–20, p. 8316; Chitty's Prerogative of the Crown, ch. xi. s. 3.

(*d*) The letters patent conferring the office of King's Printer (Scotland) bear that he shall have "solum et unicum privilegium imprimendi in Scotia Biblia Sacra, Nova Testamenta, Psalmorum libros, et libros Precum communium, Confessiones Fidei, Majores et Minores Catechismos, in lingua Anglicana."

Crown (*a*). Others have referred it to the circumstance of the King of England being the supreme head of the Church of England, and having invested him with the prerogative in virtue of that character. This latter argument, Mr. Godson (*b*) contends, destroys the proposition it is adduced to support; for, if the sovereign *as head of the church*, has the exclusive right of printing *all books* of Divine service, why not, as head of the church have a right to print the principal book used in the Divine service—*the Bible*—and all kinds of Bibles, in whatever language they may be written? And yet the principle of *property* is resorted to for the right of printing the present edition of the Bible; and Lord Mansfield has declared that there is no prerogative right to the Bible in the original languages (*c*).

Others again have been of opinion that it is to be referred to another consideration, namely, to the character of the duty imposed upon the chief executive officers of the government, to superintend the publication of the acts of the legislature and acts of state of that description; and also of those works upon which the established doctrines of our religion are founded, that it is a duty imposed upon the first executive magistrate, carrying with it a corresponding prerogative. That was the opinion of Lord Camden as expressed in the case of *Donaldson* v. *Becket*, and of Chief Baron Skinner in *Eyre and Strahan* v. *Carnan* (*d*).

No attempt has ever been made to prevent any person from publishing a translation of one book, or of a part of the Bible, from the original text, and enjoying a copyright in his production. And, with respect both to Acts of Parliament and Bibles, any one is at liberty to print them *with notes*.

Mr. Reeves, one of the royal patentees, and the writer of several learned juridical publications, in the preface to his edition of the Bible (divided into sections), observes, that all the authorized Bibles published by the king's printer and the universities are wholly without explanatory notes. These privileged persons have confined themselves to printing the bare text, in which they have an exclusive right, forbearing to publish it with notes, which it is deemed may be done by any of the king's subjects as well as themselves. He subjoins to this passage a note in the following terms: "I mean such

(*a*) *Nullum tempus occurrit regi. Rex nunquam moritur.*
(*b*) 'Patents and Copyrights,' p. 137.
(*c*) 1 Burr. 2405, cited Godson's Pat. and Copy. 137.
(*d*) Exchequer, 1781, cited 6 Ves. 697, and reported at length in 6 Bac. Abr., tit., Prerog. 509.

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notes as are *bonâ fide* intended for annotations, not the pretence of notes which I have seen in some editions of the Bible and Common Prayer Book, placed there merely as a cover to the piracy of printing upon the patentees, as if fraud could make legal anything that was in itself illegal. In some of these editions the notes are placed purposely to be cut off by the binder" (*a*).

View taken in Ireland.

In *Grierson* v. *Jackson* (*b*), upon an application for an injunction against printing an edition of a Bible in numbers with prints and notes, Lord Clare, as Chancellor of Ireland, asked if the validity of the patent had ever been established at law, and said he did not know that the Crown had a right to grant a monopoly of that kind. In the course of the discussion he made the following observations: "I can conceive that the king, as head of the church, may say that there shall be but one man who shall print Bibles and Books of Common Prayer for the use of churches and other particular purposes, but I cannot conceive that the king has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in the revealed religion; if he had, it would be in the power of the patentee to put what price he pleased upon the book, and thus prevent the instruction of men in the Christian religion. If ever there was a time which called aloud for the dissemination of religious knowledge it is this, and, therefore, I should with great reluctance decide in favour of such a monopoly as this, which must necessarily confine the circulation of the book."

View taken in England.

This has not been the view taken of the subject in England, for in the case of the *Universities of Oxford and Cambridge* v. *Richardson* (*c*), an injunction upon motion was granted against the king's printer in Scotland, who had a patent for the sale of Bibles, printing or selling them in England, upon the ground that possession, under colour of title, was sufficient to injoin and to continue the injunction till it was proved at law that it was only colour and not real title. In the course of the case it appeared that, in the year 1718, Sir Joseph Jekyll, as Master of the Rolls, had granted an injunction in a similar case, which was supported on appeal before the Lord Chancellor; and also, that a decree of the Court of Session had, in the year 1717, been reversed by the House of Lords in favour of the right of the king's printer in England, confining the right of the Scotch printer to Scotland. With respect to the precedent of the

(*a*) 2 Evans' 'Statutes,' 2nd Ed. p. 19.
(*b*) Irish T. R. 304.
(*c*) (1802), 6 Ves. 689. See *Manners* v. *Blair* (1830), 3 Bli. R. 391; *re* Red Letter New Testament (1900), 17 Times L. R. 1.

injunction, it is clear that there had been abundance of injunctions before upon private copyright, until the claim was finally put an end to by the decree of the Lords; and questions between rival patentees were not the most probable method of bringing into fair discussion the general rights of the subject to resist the claim of prerogative, root and branch (*a*). The Lord Chancellor, in his judgment, said, "My opinion is, that the public interest may be looked to upon a subject, the communication of which to the public in an authentic shape, if a matter of right, is also a matter of duty in the Crown, which are commensurate. It is not accurate to say, these privileges are not granted for the sake of unlimited sale, and for the sake of the universities, &c. They are, to a certain degree, like all other offices, calculated for that sort of advantage which will secure to the public the due execution of the duty; upon this principle proceed all the branches of our constitution (which does not adopt the wild theories that require the execution of a duty without a due compensation), that the duty is well secured in one way by giving a responsibility, in point of means, to the person to execute it. The reasoning which affects to depreciate monopoly, will perhaps tend to create it." There certainly is no great risk that false copies of the Bible would get into general circulation by an unlimited right of printing them. We do not find it materially the case in other works; and there are very few persons indeed who would admit that the beneficial circulation of any commodity in general, or of these writings in particular, can be promoted by means of an exclusive monopoly; and the principal object, both of the right and the duty, with respect to the particular subject, appears to be the benefit arising to the privileged individuals (*b*).

The question was afterwards brought before the House of Lords, and the injunction against the Scotch printer continued.

The universities of Oxford and Cambridge and the queen's printer long exercised this monopoly, under patents from the Crown, but the claim has not been very rigidly enforced. The patent granted to the queen's printer expired a short time back, and it was recommended by a committee of the House of Commons that the exclusive privilege of publishing the sacred volume should not be renewed. The House, however, took no action on this recommendation, and the Crown renewed the patent during pleasure.

(*a*) 2 Evans' 'Statutes,' 2nd ed. p. 17. (*b*) *Ibid.* p. 18.

Acts of Parliament and Matters of State.

The right in state documents.

The exclusive right of printing Acts of Parliament has been regarded somewhat more favourably than the other branches of the royal prerogative in question. Upon what ground, however, it is in some degree difficult to discover. Lord Clare, while negativing the prerogative in the matter of the Bible, said he could well conceive that the king should have a power to grant a patent to print the statute books, because it was necessary that they should be correctly printed, and because the copy can only be had from the rolls of Parliament, which are within the authority of the Crown.

But see Scrutton on Copyright ed. 1903, p. 9.

There was no king's printer by patent till the reign of Edward VI., who, in 1547, granted one to Grafton.

The right seemed to have been in effect recognised and established in the case of *Millar* v. *Taylor* (*a*), by the unanimous opinion of the judges, though they differed respecting the origin of it. This is certain respecting its origin, that it has ever been a trust reposed in the king, as executive magistrate, to promulgate to the people all those civil ordinances which are to be the rule of their civil obedience. There are traces of the ancient mode of promulgating the ordinances of the state yet remaining to us, suited to the gloominess of the times when few who heard them could have read them; the king's officers transmitted authentic copies of them to the sheriffs, who caused them to be publicly read in their county court (*b*). When the demand for authentic copies began to increase, and when the introduction of printing facilitated the multiplication of copies, the people were supplied with them by the king's patentee. From such source they were far more likely to be correct and accurate than if obtained from those unable to resort to the fountain head; and our courts of justice appeared to have so considered, when they established it as a rule of evidence, that Acts of Parliament printed by the king's printer should be deemed authentic, and received in evidence as such.

The patent was to print "all law books that concern the

(*a*) (1769), 4 Burr. 2303.

(*b*) The statute itself was drawn with the aid of the judges and other grave and learned men, and was entered on a roll called the 'Statute Roll.' The tenor of it was afterwards transcribed into parchment, and annexed to the proclamation-writ, directed to the sheriff of every county in England, and commandment given him, that he should not only proclaim it through his whole bailiwick, but see that it was firmly observed and kept; and the usage was, to proclaim it at his county court, and there to keep the transcript, that whoso would might read or take a copy of it. —Dwarris on Stat. p. 16; 4 Inst. cap. 1.

common or statute law." The first case on the subject arose between Atkyns, the law-patentee, and some members of the Stationers' Company. The plaintiff claimed under the letters patent. The defendants had printed 'Rolle's Abridgement.' The bill was brought for an injunction, and the Lord Chancellor issued one against every member of the company. The defendants appealed to the House of Lords, but the decree was affirmed.

It was argued that printing was a power of the Crown, acquired by Henry VI. by purchase, the first printer established in England having been brought to Oxford, by Archbishop Bourchier, at that king's expense! (*a*)

Perhaps the most important case on this head is that of *Roper* v. *Streater* (*b*), decided in 1672, the facts of which were these:—Roper bought of the executors of Justice Croke the third part of his reports, which he printed; Colonel Streater had a grant for years from the Crown for printing all law books, and he reprinted Roper's work without permission; on which Roper brought an action under the Licensing Act. Streater pleaded the king's grant, and on demurrer it was adjudged for the plaintiff against the validity of the patent, on these grounds: that the patent tended to a monopoly; that it was of a large extent; that printing was a handicraft trade, and no more to be restrained than other trades; that it was difficult to ascertain what should be called a law book; that the words in the patent "touching or concerning the common or statute law," were loose and uncertain; that if this were to be considered as an office, the grant for years could not be good, as it would go to executors and administrators; and that there was no adequate remedy in the way of redress in cases of abuses by unskilfulness, selling dear, printing ill, &c. This judgment, however, was reversed on a writ of error in Parliament, for the following reasons: that the invention of printing was new; that this privilege had been always allowed, which was a strong argument in its favour, although it could not be said to amount to a prescription, as printing was introduced within time of memory; that it concerned the state, and was matter of public care; that it was in the nature of a proclamation, which none but the king could make; that the king had the making of judges, serjeants, and officers of the law; that as to the uncertainty, these words in the patent were to be taken *secundum subjectam materiam*, and not to be extended to

(*a*) *Atkyns's case*, Carter, 89; 1 Bl. 113; 6 Bac. Abr. 507; 10 Mod. 105.
(*b*) (1672), Skin. 234. See 1 Mod. 257; 2 Show. 260; 10 Mod. 105.

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a book containing a quotation of law but where the principal design was to treat on that subject; that as to its being an office, it was not so properly an office as an employment, which may well enough be managed by executors or administrators; and that as to abuses, these, like all others, were punishable at common law, or the patent itself might be repealed by *sci. fac.* (*a*).

In the case of *Baskett* v. *The University of Cambridge* (*b*) the prerogative right of Printing Acts of Parliament was sanctioned by a decision of the Court of King's Bench. That case arose upon a bill filed by the plaintiffs for an injunction to restrain the defendants from printing and selling a book entitled 'An Exact Abridgment of all the Acts of Parliament relating to the Excise on Beer, &c.' Both parties claimed under letters patent from the Crown; the plaintiffs as the king's printers. The Court were of opinion that during the term granted by the letters patent to the plaintiffs, they were entitled to the right of printing Acts of Parliament and abridgments of Acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the Crown; but they thought that by the letters patent granted to the university it was entrusted with a concurrent authority to print Acts of Parliament and abridgment of Acts, within the university, upon the terms contained in those letters patent.

Soon after the Restoration an Act of Parliament having prohibited the printing of law books without the licence of the Lord Chancellor, the two Chief Justices, and the Chief Baron, it became the practice to prefix such a licence to all reports published after that period, in which it was usual for the rest of the judges to concur, and to add to the *imprimatur* a testimonial of the great judgment and learning of the author. This Act was renewed from time to time, but finally expired in the reign of the third William. The form of licence and testimonial, however, was continued till the reign of George II., when the judges seemed to have arrived at the determination not to grant any more of them (*c*). Sir James Burrow offers an apology for publishing his reports without an *imprimatur* (*d*).

As to the publication of

Though a court of justice appears to have the sole power of authenticating the publication of its own proceedings, it does

(*a*) 3 Mod. 77; 6 Bac. Abr. 507.
(*b*) (1746), 1 W. Bl. 105; 2 Burr. 661; see 2 Bla. Com. 116; and 5 Bac. Abr. tit. Pre. F. 5.
(*c*) Pref. to Dougl. R.
(*d*) Burr. R. Pref. viii.

not necessarily follow that it has an exclusive right of publication.

proceedings in courts of justice.

Since the Year-Books, it seems that no judicial proceedings, with the exception of state trials, have been published under authoritative care and inspection, either by the House of Lords or by any court of judicature.

In *Sayer's Case* (*a*) the judges of the Court of Queen's Bench directed, and in part revised, a report of the trial. The trial of Lord Melville (*b*) was likewise published by order of the Lords; and the person appointed for that purpose by the Lord Chancellor obtained an injunction against a bookseller for publishing another report of the case. *Manley* v. *Owen* (*c*) recognises the exclusive right of the Lord Mayor of London, as head of the commission, to appoint a person to print the sessions papers of the Old Bailey. Formerly, it was held to be a contempt of court to publish any reports whatever, but the practical application of this doctrine was soon relaxed, and publication is now only treated as a contempt in those cases in which the report is published in opposition to an order of the Court.

When publication during trial prohibited.

Publication during the course of a trial will be prohibited, when the publication would have a tendency to interfere with a fair and impartial decision; on this principle Lord Abbott, C.J., sitting at the Old Bailey, acted on the indictment of Thistlewood and others for high treason in the year 1820 (*d*). The prohibition was infringed by the proprietor of the 'Observer' newspaper, and the proprietor was fined £500 for contempt of court. He appealed subsequently to the Queen's Bench, on which occasion Holroyd, J., in refusing to make absolute a rule *nisi* obtained, said: "This was an order made in a proceeding over which the Court had judicial cognizance; the subject-matter respecting which it was made was then in the course of judicature before them. The object for which it was made was already, as it appears to me, one within their jurisdiction, viz., the furtherance of justice in proceedings then pending before the Court; and it was made to remain in force so long, and so long only, as those proceedings should be pending before them. Now, I take it to be clear that a court of record has a right to make orders for regulating their

(*a*) 16 How. St. Tr. 93; 8 Parl. Hist. 54.
(*b*) 29 How. St. Tr. 549. See *Bathurst* v. *Kearsley*, cited *Gurney* v. *Longman*, 13 Ves 493, 509.
(*c*) Cited *Millar* v. *Taylor*, 4 Burr. 2329. See 13 Ves. 493; *Stockdale* v. *Hansard* (1842), 9 Ad. & E. 1, 97.
(*d*) *Reg.* v. *Clement* (1820), 4 Barn. & Ald. 218; see also *Tichborne* v. *Mostyn* (1869), L. R. 7 Eq. 55, note; *re* Martindale (1894), 3 Ch. 193.

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proceedings and for the furtherance of justice in the proceedings before them, which are to continue in force during the time that such proceedings are pending. It appears to me, that the arguments as to a further power of continuing such orders in force for a longer period do not apply. It is sufficient for the present case, that the court have that power during the pendency of the proceedings. This order was made to delay publication only so long as it was necessary for the purposes of justice, leaving every person at liberty to publish the report of the proceedings subsequently to their termination. I am therefore of opinion, that this was an order which the court had the power to make."

Publication of *ex parte* statements upon a coroner's inquest.

A criminal information will lie for publishing an *ex parte* statement of the proceedings upon a coroner's inquest, accompanied with comments, although the statement be correct, and the party has no malicious motive in the publication. Mr. Justice Bayley on one occasion observed that it was a matter of great criminality; for the inquest before the coroner leads to a second inquiry, in which the conduct of the accused is to be considered by persons who ought to have formed no previous judgment in the case. A jury who are afterwards to sit upon the trial ought not to have *ex parte* accounts previously laid before them; they ought to decide solely upon the evidence which they hear upon the trial (*a*).

No prerogative claim to the exclusive publication of judicial proceedings has now been asserted for very many years, and in *Butterworth* v. *Robinson* (*b*), and *Saunders* v. *Smith* (*c*), individuals were treated as authors and proprietors of copyright in law reports (*d*).

It is clear, however, that no individual can claim any exclusive right to the opinions or judgments of the judges, for though a reporter can have copyright in his report and prevent the piracy of that upon which he has spent time and labour (*e*). yet it is obvious that he has no exclusive right to the words that the judge has uttered so as to be able to prevent another from publishing his own report of them.

(*a*) *Rex* v. *Fleet* (1817), 1 Barn. & Ald. 379. 384. See *Tichborne* v. *Tichborne* (1875), 15 W. R. 1072: 17 L. T. (N.S.) 5. As to staying reports of cases as libellous or unfair, see *Brooke* v. *Evans* (1860). 6 Jur. (N.S.) 1025: *Coleman* v. *W. Hartlepool Railway* (1869), 8 W. R. 734.

(*b*) (1801), 5 Ves. 709.

(*c*) (1838), 3 My. & Cr. 711, and *Vesey* v. *Sweet*, cited 5 Ves. 709, note 3.

(*d*) Phillips on Copy. 196. See *Wheaton* v. *Peters* (1834), 8 Peters R. (Amer.) 591, 668, and remarks of Story, J., in *Gray* v. *Russell* (1839), 1 Story. R. (Amer.) 4.

(*e*) *Walter* v. *Lane* (1900). A. C. 539. But see the following American decisions *Wheaton* v. *Peters*, *supra*; *Gray* v. *Russell*, *supra*; *Banks* v. *Manchester* (1888). 128 U.S. 244; *Davidson* v. *Wherlock* (1866). 27 Federal Reporter 61.

It seems clear that if *bonâ fide* notes accompany statutes printed by others than those having the patent right, the copyright of the latter is not infringed, but the notes must be *bonâ fide*, and not merely colourable or collusive (*a*).

Almanacs.

As to the right in almanacs.

The origin of this absurd claim is put upon still more ridiculous grounds. Property in almanacs is said to be the king's: 1st, because derelict; 2nd, because they regulate the feasts of the church (*b*).

On the 8th of March, 1615, the king by letters patent granted to the Stationers' Company and their successors for ever (*inter alia*) exclusive power and licence to print, or cause to be printed, "all manner of almanacs and prognostications whatsoever in the English tongue, and all manner of books and pamphlets tending to the same purpose, and which are not to be taken and construed other than almanacs or prognostications being allowed by the Archbishop of Canterbury and the Bishop of London, or one of them for the time being."

In an action of debt by the *Company of Stationers against Seymour* (*c*), for printing 'Gadbury's Almanac,' it was adjudged that the letters patent granted to the company for the sole printing of almanacs were valid: and though the jury found that the almanac so printed contained some additions, yet having likewise found that the said almanac had all the essential parts of the almanac that was printed before the Book of Common Prayer, the additions were regarded as immaterial.

So also was an injunction granted against Lee (*d*), on the application of the Stationers' Company to restrain him from selling "primers, psalters, *almanacs*, and singing psalms, imported from Holland," the sole privilege of printing these belonging to that Company; and that without any trial directed as to the validity of the patent. Notwithstanding the above decisions, the prerogative right to the printing of almanacs was strongly protested against in the case of the *Stationers' Company* v. *Partridge* (*e*). No judgment, indeed, was given in that case, but it stood over that the Company might see if they could make it like the case of the Common Prayer Book,—whether they could show that the right of the

(*a*) *Baskett* v. *Cunningham* (1762), 1 W. Bl. 370.
(*b*) 2 Show. 258; *Stationers' Co.* v. *Wright*, 2 Ch. Cas. 76. (*c*) 1 Mod. 256.
(*d*) (1681) 2 Ch. Ca. 76, 93; 2 Show. 259; *Stationers' Co.* v. *Wright*, Skin. 234; 4 Burr. 2328.
(*e*) (1709), 10 Mod. 105, cited 2 Bro. P. C. 137.

CAP. IX. Crown had any foundation in property; and it was never referred to again.

In a subsequent case, that of the *Stationers' Company* v. *Carnan* (*a*), the right was successfully combated, and judgment given in favour of the defendant. An account of these various phases of legal doubt and indecision is succinctly given by Lord Erskine in *Gurney* v. *Longman* (*b*): "It appears in the case of *Millar* v. *Taylor* that the Crown had been in the constant course of granting the right of printing almanacs; and at last King James II. granted that right by charter to the Stationers' Company and the two universities, and for a century they kept up that monopoly by the effect of prosecutions. At length Carnan, an obstinate man, insisted upon printing them. An injunction was applied for in the Court of Exchequer, and was granted to the hearing; but at the hearing, the Court of Exchequer directed the question to be put to the Court of Common Pleas, whether the king had a right to grant the publication of almanacs, as not falling within the scope of the necessity or expediency, the foundation of prerogative copies. It was twice argued in the Court of Common Pleas; and the answer returned by that court to the Court of Exchequer was, that the charter was void, and almanacs were not prerogative copies. The injunction was accordingly dissolved, that usurpation having gone on for a century; and the House of Commons threw out a bill, brought in for the purpose of vesting that right in the Stationers' Company."

In consequence of this decision, an Act was passed, which after reciting, that the power of granting a liberty to print almanacs and other books was theretofore supposed to be an inherent right in the Crown, and that the Crown had, by different charters under the great seal, granted to the universities of Oxford and Cambridge, among other things, the privilege of printing almanacs; and that the universities had demised to the Company of Stationers their privileges of printing and vending almanacs and calendars, and had received an annual sum of £1000 and upwards as a consideration for such privilege, and that the money so received by them had been laid out and expended in promoting different branches of literature and science, to the great increase of religion and learning and the general benefit and advantage of these realms; and that the privilege or right of printing almanacs had been, by a late decision at law, found to have been a common right, over which the Crown had no control, and consequently the

(*a*) 2 Wm. Bl. 1004. (*b*) (1806), 13 Ves. 508.

universities no power to demise the same to any particular person or body of men, whereby the payments so made to them by the Company of Stationers had ceased and been discontinued, enacted that £500 a year should be paid to each of the universities, out of the moneys arising from the duties upon almanacs (*a*).

Any person may now make the calculations usually published in almanacs, and claim a copyright therein.

The Nautical Almanac.

A power was given by Act of Parliament to certain commissioners, to publish a 'Nautical Almanac, or Astronomical Ephemeris,' and to *license* some one to print it. Any other person printing, publishing, or vending it, subjects himself to a penalty. The 'Nautical Almanac' is now, however, placed under the control of the Lords of the Admiralty, and the penalty is increased to £20 with costs of suit, to be paid and applied to the use of the Royal Hospital for Seamen at Greenwich (*b*).

As to the Latin Grammar.

The claim to the prerogative right in 'Lilly's Latin Grammar' was founded on an allegation that the work had been originally written and composed at the king's expense. Mr. Justice Yates observed in *Millar* v. *Taylor* that the expense of printing prerogative books was "in fact no private disbursement of the king, but done at the public charge, and formed part of the expense of government." How, then, could they be his private property, like private property claimed by an author in his own compositions? (*c*) The claim has long been abandoned.

(*a*) 21 Geo. III., c. 56, s. 10. (*b*) 9 Geo. IV., c. 66.
(*c*) See *Stationers' Co.* v. *Partridge*, 4 Burr. 2339, 2382, 2402; 10 Mod. 105; *Nicol* v. *Stockdale* (1820), 3 Swans. 687.

CHAPTER X.

UNIVERSITY AND COLLEGE COPYRIGHT.

Copyright at the universities and colleges.

Upon the introduction of the art of printing into England by Henry VI. a press was set up in Oxford; and an important dominion over the publication of books was, for many years, very naturally assumed by that learned body. The sway was extended to the sister university, and increased in power by charters and grants conferred upon them by the liberality and bounty of several kings.

Immediately after, and in consequence of, the decision in *Donaldson* v. *Becket* (*a*), the universities hastened to Parliament, and in the same year obtained an Act (*b*) for enabling the two universities in England, the four universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to them for the advancement of useful learning and other purposes of education.

The right exists in all such books as had, before the year 1775, or have since, been given or bequeathed by the authors of the same, or their representatives, to or in trust for those universities, or any college or house of learning within them, or to or in trust for the colleges of Eton, Westminster, and Winchester, or any of them, for the beneficial purpose of education within them or any of them (*c*).

The exception in favour of the universities and colleges is to extend only to their own books, so long as they are printed at the college press and for their sole benefit; and any delegation of the right works a forfeiture, and the privilege becomes of no effect.

As to their registration and sale.

A power is given to the universities to sell or dispose of the copyrights given or bequeathed to them, but if they delegate, grant, lease, or sell the copyright of any book, or allow any

(*a*) (1774). 4 Burr. 2408. (*b*) 15 Geo. III., c. 53.

(*c*) The late Dr. Jowett bequeathed the copyright in his books to the University of Oxford in conformity with this Act.

person to print it, their privilege ceases to exist. The copyright of any work presented to the universities must be registered at Stationers' Hall within two months after any such gift shall come to the knowledge of the officers of the universities.

Registration.

The register book may be inspected without fee, and the clerk is to give a certificate of any entry on payment of a fee not exceeding sixpence. If the clerk refuse to make entry or give certificates of entries, the university or college which owns the copyright (notice being first given of such refusal by an advertisement in the *Gazette*), is to have the like benefit as if such entry or certificates had been duly made and given, and the clerk who refuses is for every offence to forfeit £20 to the proprietors of the copyright.

Piracy.

If any one prints, reprints, or imports, or causes to be printed, reprinted, or imported, any such book or books, or, knowing the same to be so printed or reprinted, sells, publishes, or exposes to sale, or causes to be sold, published, or exposed to sale, any such book or books, he is to forfeit the books and every sheet of them, to the proprietor of the copyright, and one penny for every sheet found in his custody either printed, or printing, published, or exposed to sale, contrary to the true intent and meaning of the Act, one half to go to the Crown, the other half to the prosecutor (*a*).

By an Act passed in the forty-first year of Geo. III., c. 107, a similar copyright is given to Trinity College, Dublin. And by the 27th section of the 5 & 6 Vict. c. 45, the rights of the respective universities and colleges above enumerated are saved from the operation of the Copyright Act,

Copyrights at present possessed by the universities.

It appears that in 1878 the University of Oxford possessed six copyrights, and the University of Cambridge had none. "This fact," says the Royal Commissioners in their Report in 1878 on Copyright, "shows that the privilege, which is by no means of recent origin, is of very little real value, and as it is undesirable to continue any special and unusual kinds of copyright, we are of opinion that this exceptional privilege should be omitted from the future law. We do not, however, think it would be right to deprive the institutions above named of the copyrights they already possess, without their consent, but should they be retained, we suggest that the universities and other institutions should be placed upon the same footing as regards protection of their copyrights as other copyright owners, and that the exceptional penalties and remedies given by the Act which was passed in the fifteenth year of the reign of his late Majesty King George III. should be repealed."

(*a*) 15 Geo. III. c. 53, s. 2.

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MUSICAL AND DRAMATIC COPYRIGHT.

Copyright and performing right.

MUSICAL and dramatic compositions have this point in common, that the author of either has, or may have, two different rights in his composition: one, that of copyright proper, the right to prevent the multiplication of copies of the piece itself; the other, what may be called the acting right or performing right—the right to prevent other persons from publicly representing or performing the piece without his (the author's) consent. These two rights are, as we shall see, quite distinct, each being a separate property and each capable of being assigned without the other, and they may expire at different times (*a*).

Such compositions within the Literary Copyright Act.

As to copyright proper, both musical and dramatic compositions, when in manuscript, are protected like other literary compositions (*b*); when printed and published they are books within the meaning of the Literary Copyright Act.

The point whether there could be copyright in a musical composition first came before Lord Mansfield in *Bach* v. *Longman* (*c*). It was a case sent out of Chancery for the opinion

(*a*) *Chappell* v. *Boosey* (1882), 21 Ch. D. 232.

(*b*) In *Gilbert* v. *Star Newspaper Co.* ((1894) 11 T. L. R. 515), the publication of the plot of a play in rehearsal was restrained.

(*c*) (1777), Cowp. 623. In *D'Almaine* v. *Boosey* (1835), 1 Y. & C. Exch. 299, Lord Abinger said: "I spent three or four days at Stationers' Hall in order to ascertain what entries were made under the Act of Parliament, and I found not only that short publications on single sheets of paper were entered as books, but also a great deal of music. There is no doubt, therefore, that printed music, in whatever form it may be published, is to be considered in reference to proceedings of this nature, as a book." Music copyrights are sometimes of great value. At a sale of Messrs. Hopwood and Crewe, the copyrights of that firm fetched a total of £15,000—Coote's 'Burlesque Valse,' £175 10*s*.; the 'Sweetly Pretty Valse,' £215; the 'Cornflower Valse,' £132; and the 'Prince Imperial Galop,' £990, the largest sum ever obtained, it is believed, for a single piece of dance music; Hobson's 'Popular Favourites for the Pianoforte' sold for £412 10*s*.; Buckley's song, 'Come where the Moonbeams Linger,' £157 10*s*.; and H. Clifton's 'Very Suspicious,' £330. Mr. Coote purchased his own 'Snowdrift Galop' for £561.

The copyright of some comic songs often fetch high prices. It was given in evidence, in a case which came before the Common Pleas Division of the High Court of Justice some time ago, that they were worth sometimes from £1000 to £2000, the comic music publisher, Henry D'Alcorn, stating that he had sold as many as 90,000 copies of the music of 'Slap Bang! Here We Are Again!' and of another song he had sold 70,000 copies.

of the Court of King's Bench: "Whether, in a composition for the harpsichord, called a *sonata*, the original composer had a copyright?" The opinion given was, that the same rules of law apply both to literary and musical compositions. It was said that the words of the Act of Parliament were very extensive: "Books, or other writings," and consequently they were not confined to language and letters only. Music is a science; it may be written, and the mode of conveying the ideas is by signs and marks. If the narrow interpretation contended for were to hold (*i.e.*, confined to books only), it would apply equally to mathematics, algebra, arithmetic, or hieroglyphics. The case being one sent out of Chancery, the certificate of the judge was: that a musical composition is a writing within the statute of 8 Anne, c. 19, and that of course the plaintiff was entitled to the copyright given to the author by that Act.

In *Storace* v. *Longman* (*a*), a "certain musical air, tune, and writing," on one sheet, was protected, and in a later case (*b*) a single sheet of music was held to be a book within the meaning of the statute of Anne. And where copyright was claimed under 54 Geo. III., c. 156, in a piece of instrumental music, Chief Justice Abbott, in delivering the judgment of the King's Bench, expressed the opinion that "any composition, whether large or small, is a book within the meaning of the Act of Parliament" (*c*).

Now, by the interpretation clause of the 5 & 6 Vict. c. 45, the word "book," in the construction of the Act, is to mean and include "every volume, part or division of a volume, pamphlet, sheet of letterpress, *sheet of music*, map, chart, or plan separately published."

Performing right at common law.

Until 1833 there was no statute dealing with the right of the author of a dramatic composition to represent it in public, and musical performing rights were not touched by statute till 1842. At common law the author had the exclusive right of public performance, if the work were not published as a book; but if it were so published he probably lost such right.

In an early case, it was declared that the acting a play was not a publication of it; and by analogy, it was subsequently held, at common law, that the mere *acting* a play which had been printed and published did not constitute a piracy or an infringement of the copyright (*d*).

(*a*) (1788), 2 Camp. 27, note a. (*b*) *Clementi* v. *Golding* (1809), 2 Camp. 32.
(*c*) *White* v. *Geroch* (1819), 2 Barn. & Ald. 298; see *Clayton* v. *Stone*, 2 Paine (Amer.) 383.
(*d*) In equity, injunctions have been granted to stop the performance of printed

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Formerly representation not equivalent to publication.

In the former case, the plaintiff was the author of a farce called 'Love à la Mode,' consisting of two acts, which was performed, with his permission, several times at the different London theatres in successive years, but was never printed or published by him. When the farce was over, the plaintiff used to take the copy away from the prompter, and when it was played at the benefits of particular actors he made them pay a certain sum for the performance. The defendants who were proprietors of a magazine called 'The Court Miscellany; or, Gentleman and Lady's Magazine,' employed a shorthand writer to take down the words of the play at the theatre, and thus published the first act, giving notice that they would publish the second act in their next number. An injunction, however, was obtained on the ground that acting a play was not a publication of it (*a*).

The latter case was an action on the statute of Anne, for publishing an entertainment called 'The Agreeable Surprise.' The plaintiff had purchased the copyright from O'Keefe, the author, and the only evidence of the publication by the defendant was the representation of the piece upon his stage at Richmond. It was held that there was no publication; the statute for the protection of copyright only extending to prohibit the publication of the work itself by any other than the author (*b*).

American law on this subject.

Though the law on this point has been altered as to the English law by the 5 & 6 Vict. c. 45, s. 20 (*c*), the American law would appear to be in accordance with the above decision. In a case, in 1870, before the Superior Court of New York (*d*), the facts were as follows: The action was brought to obtain an injunction restraining the printing and publishing by the defendant of a drama or comedy called 'Play,' and the complaint, alleged that immediately prior to February, 1868, Mr. Robertson, of London, sold to the plaintiff his exclusive right of performing the drama upon the stage, and printing and publishing the same within and throughout the United States; that the first performance of it was at the Prince of Wales'

dramatic works at the request of the authors of them: *Morris* v. *Harris*, *Morris* v. *Kelly* (1820), 1 Jac. & W. 481; 21 R. R. 216; cited Godson on 'Patents and Copyrights,' 390.

(*a*) *Macklin* v. *Richardson* (1770), Amb. 694; but see 5 & 6 Vict. c. 45, s. 20.

(*b*) *Coleman* v. *Wathen* (1793), 5 T. R. 245. Sheridan's opera of the 'Duenna' (*The Proprietors of Covent Garden* v. *Vandermere and others*) was also represented on the stage without the permission of the proprietor on similar grounds; see, however, 5 & 6 Vict. c. 45, s. 40.

(*c*) *Boucicault* v. *Delafield* (1863), 33 L. J. Ch. 38; 9 L. T. 709.

(*d*) *Palmer* v. *Dewett* (1870), 23 L. T. 823.

Theatre, in London, but that there had been no *publication* in any other way. The defendant, however, had obtained the words of the play, &c., from persons who had seen it acted in London, and he published it in the United States before the plaintiff. This the defendant justified on the ground that the tickets admitting the spectators to the performance in London contained no notice or prohibition against carrying the comedy away, by memory or otherwise, and using, printing, or publishing the same; nor was any notice to that effect posted in any of the theatres in view of the spectators. The question was, whether the performance in London was such a publication as would deprive the owner of his common law right of property in it, and the Court held that it was not. Mr. Justice Monell, in his judgment, after examining the case of *Keen* v. *Clark* (*a*), where it had been decided that it was not unlawful for a spectator to carry away in memory and give to the world an unpublished literary production, the performance of which he had witnessed, or to the recital of which he had listened, and after holding that the case of *Boucicault* v. *Delafield* (*b*) decided in England, was not an authority upon any question of actual or constructive publication not arising under the English copyright law, summed up as follows: "My conclusions upon the whole case are, that there was no such publication by the plaintiff, or by his assignor, of the play in question as to deprive the plaintiff of his common law right of property in it. That public representations of the play were not a publication of the play so as to take away the common law right. . . . . I am, therefore, of opinion that the plaintiff is entitled to a judgment restraining the defendant from further printing or publishing the play, and requiring him to deliver up to be destroyed such as are now in print" (*c*).

That the author of a musical or dramatic composition who published in the form of a book thereby lost, at common law, his right to prevent the public performance of it without his consent seems to be involved in the decision in *Murray* v. *Elliston* (*d*). In that case Lord Byron's tragedy of 'Marino Faliero,' altered and abridged for the stage, was performed without the consent of the owner of the copyright, who applied for an injunction and it was laid down, that an action could not be maintained, "for publicly acting and representing the said tragedy, abridged in manner aforesaid." As, however, in the case cited, the

(*a*) 5 Robt. (Amer.) 38. (*b*) *Ubi sup.*
(*c*) 7 Rob. (N.Y.) 530; 2 Sweeny (N.Y.) 530; 47 N. Y. 532, 543.
(*d*) (1822), 5 Barn. & Ald. 657; and S. C. 1 Dowl. & Ryl.; 24 R. R. 519. The law now been altered. *Chappell* v. *Boosey* (1882), 21 Ch. D. 232.

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Courts seem to have held that the plaintiff, apart from the question of abridgment, had no exclusive right, it is difficult to see what stress they laid upon the fact of the alleged piracy being an abridgment.

Act to amend the law relating to dramatic copyright.

The many defects existing in the law as to performing rights led to the passing of the 3 & 4 Will. IV. c. 15 (*a*), which, however, only dealt with the performing rights in dramatic pieces. It enacted that the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment (*b*) *composed and not printed or published* should have the sole liberty of representing it, or causing it to be represented, in any part of the British dominions (*c*); and that the author of any such production which should be *printed and published* should have the sole right of representation from the time of publication, for a period of twenty-eight years, and also if the author were living at the end of that time, for the remainder of the author's life. And further enacted, that if any person should represent, or cause to be represented (*d*), without the consent in writing of the author or other proprietor (*e*), at any place of dramatic entertainment (*f*), any such production, or any part thereof, every such offender should be liable for each and every such representation to the payment of an amount not less than 40*s.* or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever should be the greater damages, to the author or other proprietor of such production so represented, to be recovered, together with double costs of suit.

Double costs were taken away in all cases by 5 & 6 Vict. c. 97, s. 2, and the plaintiff can now only recover a full and reasonable indemnity as to all expenses incurred, to be taxed by the proper officer in that behalf (*g*).

Copyright Act, 1842.

The 5 & 6 Vict. c. 45 deals with the performing rights

(*a*) Commonly called Sir Edward Bulwer Lytton's Act.

(*b*) In *Lee* v. *Simpson* (1847), 3 C. B. 871, 4 D. & L. 666, it was determined that a pantomime, or rather the introduction to one, which is the only written part of the entertainment, is protected from piracy under this Act.

(*c*) No period for the right of representation is here prescribed for an unpublished work, and it has been contended that the effect of this was to confer a perpetual right.

(*d*) *Russell* v. *Briant* (1849), 19 L. J. (C.P.) 33; 14 Jur. 201; 8 C. B. 836; *Lyon* v. *Knowles* (1863), 5 B. & S. 751; *Marsh* v. *Conquest* (1864), 17 C. B. 418; *Monaghan* v. *Taylor* (1885), 2 T. L. R. 685; *Duck* v. *Mayeu* (1892), 2 Q. B. 511; 8 T. L. R. 339; *French* v. *Day* (1892), 9 T. L. R. 548; *Kelly's Directories* v. *Gavin* (1902), 1 Ch. 631.

(*e*) *Eaton* v. *Lake* (1888), 20 Q. B. D. 378.

(*f*) *Wall* v. *Taylor*, *Wall* v. *Martin* (1882), 9 Q. B. D. 727; 11 Q. B. D. 102; *Duck* v. *Bates* (1884), 12 Q. B. D. 79; 13 Q. B. D 843.

(*g*) *Reeve* v. *Gibson*, [1891] 1 Q. B. 652.

both in musical and dramatic compositions. Section 20, after reciting that it was expedient to extend the term of the sole liberty of representing dramatic pieces given by the 3 & 4 Will. IV. c. 15 to the full time provided by the 5 & 6 Vict. c. 45 for the continuance of copyright; and that it was expedient to extend to musical compositions the benefits of the 3 & 4 Will. IV. c. 15, provides that the sole liberty of representing or performing, or causing (*a*) or permitting to be represented or performed, any dramatic piece or musical composition shall endure and be the property of the author thereof and his assigns for the term in the Act provided for the duration of copyright in books (*b*); and the provisions thereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were therein expressly re-enacted and applied thereto (*c*), save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of the Act, to the first publication of any book: provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed, the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance. Section 21 provides that the person who has the sole liberty of representing a dramatic piece or musical composition shall have and enjoy all the remedies given by the 3 & 4 Will. IV. c. 15 during the whole of his interest therein.

Effect of representation of manuscript play.

The common law right to the exclusive representation of a manuscript play is lost by the public performance of the piece, and since the passing of the statute the only protection the author can claim is that conferred by the statute. This evidently does not attach until the play has been publicly represented.

It is doubtful whether, supposing a dramatic piece or

(*a*) See *Parsons* v. *Chapman* (1831), 5 Car. & Payne, 33; *Monaghan* v. *Taylor* (1885), 2 T. L. R. 685.

(*b*) Strictly, a copyright song cannot be publicly sung, or a tune publicly played, without the permission of the composer or his assigns.

(*c*) By virtue of this section the 5 & 6 Vict. c. 45, is retrospective as to the exclusive right to the performance of musical compositions published before the passing of the Act: *Ex parte Hutchins and Romer* (1878), 4 Q. B. D. 90, 483.

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musical composition in manuscript to have been registered so as to give protection to the right of representing it or performing it, the subsequent printing and publication of such piece or composition, if not followed by the deposit at Stationers' Hall, can be held to take away that right (*a*).

The remedies provided by the Act of Will. IV. not affected by the 5 & 6 Vict. c. 45.

The Act of 5 & 6 Vict. c. 45, in extending the term of copyright in dramatic pieces, and providing for their registration and assignment, does not deprive the proprietor of the remedies given by the Act of Will. IV.

This was seen in a case which came before the Court of Exchequer in 1872. The facts were briefly these: The plaintiff purchased from a Mr. Elton all the property in the copyright in the words of a comic song called 'Come to Peckham Rye,' of which the latter was author, the sum given being £2. Mr. Clark was in the habit of singing this song at the Oxford Music Hall, and similar places of entertainment. In the course of his performance the song attracted much attention, and he was offered by a certain publisher ten guineas for his property in the composition. The defendant Bishop, who was a publisher in the East-End of London, contrived to obtain a copy of the song, which up to this moment remained in manuscript, and published the same with some slight alterations. The plaintiff, feeling himself aggrieved, brought an action for damages against Bishop for the infringement of his copyright The case was tried before the common serjeant in the Lord Mayor's Court, when a verdict was returned against the defendant with £10 damages. A rule to set aside such verdict was, however, obtained on the ground that the plaintiff not having registered his copyright at Stationers' Hall, had no right to sue for damages in respect of it. The point having been fully argued, the court decided that the 24th section of the Act applied only to books, and had no reference to such productions as that in question: and that the other sections relating to songs and dramatic representations connected with them, did not make it obligatory to the owners to register them in order to preserve them against any infringement of their copyright (*b*). Consequently it may be taken that the omission to register will not prejudice the remedies which the

Omission to register does not affect the

(*a*) See *Boosey* v. *Fairlie* (1877), 7 Ch. Div. 301, 316. It has been held in America that the representation of a dramatic work which the proprietor has never caused to be printed and has not obtained a copyright of, if made without the licence of the proprietor, is a violation of his right, and may be restrained by injunction, although such representation is from a copy obtained by a spectator attending a public representation by the proprietor for money, and afterwards writing it from memory. *Tompkins* v. *Halleck*, 19 Lathrop. (Amer.) 32.

(*b*) *Clark* v. *Bishop* (1872), 25 L. T. 908.

proprietor of the sole liberty of representing any dramatic piece has by virtue of the Act 5 & 6 Vict. c. 45, or of the 3 & 4 Will IV. c. 15.

copyright or the recovery of penalties.

We propose now to consider the term of copyright conferred on the author of a musical or dramatic composition.

Term of copyright.

First, as to copyright strictly so-called, that is the sole right or liberty of multiplying copies of the composition:—By virtue of section 3 of the Copyright Act, 1842, the author will have copyright, where the work is published in his lifetime, for his life and a further term of seven years from the time of his death or for a single term of forty-two years, whichever be the longer period. The time runs from the date of publication. If the work be published after the author's death then the proprietor of the manuscript will have copyright for forty-two years, likewise calculated from the date of publication.

Secondly, as to the performing right:—(a) If the work has been published as a book, the author has the exclusive performing right for the same period as the copyright, except that the right dates from the first public representation or performance of the work; (b) if the work has not been published as a book, but is in manuscript only, the term is doubtful, for the 3 & 4 Will. IV. c. 15 did not prescribe any term in such a case, and it is not clear that the 5 & 6 Vict. c. 45 has altered this. The right may, therefore, be perpetual, or, on the other hand, as seems more probable, the term may be the same as in the case where the work is printed and published.

These two rights—copyright and performing rights—may each reside in different persons simultaneously and may expire at different periods.

Right of representation in manuscript plays.

It is obvious that many questions of difficulty may arise with regard to the right of representation in manuscript plays.

Some of the general principles seem clear, but there are very nice distinctions on which little light is obtainable from the reported cases. When the right of representation has once been secured, it will be unaffected by any subsequent representation of the piece. Therefore, if first published in Great Britain and the copyright in the piece duly secured, the first representation of the play afterwards in a foreign country would not affect the copyright.

But a previous publication of the play in print in a foreign country would in the absence of any treaty defeat the claim to copyright in this, and the right of representation could not

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be secured in this country, even though the first representation of the play were to take place here.

It is said that the duration of the copyright is governed not by the representation, but by the publication, and that as the copyright dates from publication, it cannot be defeated or affected by any public performance of the play, no matter when or where made.

But this must be accepted with caution, for it would make the right of representation begin with and depend upon the first publication in print. And if such were the case a dramatist might have enjoyed the exclusive right of representing a manuscript play under the 20th section of the Copyright Act for nearly forty-two years, and then publish it in print and secure the copyright in the publication for another period of forty-two years. For the copyright in the piece itself would commence to run from the date of publication in print, but in such case it is doubtful whether the author would have the exclusive right of representation during this second period also. For it must be remembered that the 20th section expressly provides that the sole right of representation is to be secured to the author of a dramatic piece in manuscript by entering on the register, amongst other things, "the time and place of the first representation or performance"; and that "the first public representation or performance of any dramatic piece shall be deemed equivalent in the construction of the Act to the first publication of any book."

It therefore seems more likely that, should the question arise, it would be held that the right of exclusive representation would run from the date of the first representation of the play in manuscript, and not from the date of the publication of the same play in print. No limit is fixed for the duration of the exclusive right of representation of the play while yet in manuscript; and therefore if not perpetual, the right would seem to last for forty-two years or for the life of the author, and seven years after his death, whichever may be the longer period.

Where the right to the exclusive representation of a piece in manuscript has been lost by first representing the same in a foreign country, it cannot be recovered afterwards by printing and publishing the piece; for though the copyright in the printed piece might be thus secured, the right of representation having become common property could not thus be regained.

It has been thought that the right of representation, secured by registration in accordance with the Act, of a piece in manu-

script may be lost by such a publication in print as will amount to an abandonment of the copyright. It is argued that the right of representing a manuscript play rests on the condition that the composition is not published in print,—after it has been so published it passes from the class of manuscript to that of printed plays, and becomes subject to the conditions on which the right of exclusive representation will vest in published plays:—that this right then becomes subordinate to the copyright, and the validity of the former is dependent on that of the latter right; that an abandonment of the copyright, which is the greater right, involves an abandonment of the lesser right of representation; and that when the title to copyright is forfeited, the work becomes public property as far as printing copies is concerned; and this would make it public property as far as representing it is concerned (*a*).

In this view, however, we are unable entirely to concur.

Suggestions of the Copyright Commissioners as to musical and dramatic copyright.

As to dramatic pieces and musical compositions, the Royal Commissioners in their report in 1878 said: "While in books there is only one copyright, in musical and dramatic works there are two, namely, the right of printed publication and the right of public performance.

"These rights are essentially different and distinct, and we find that many plays and musical pieces are publicly performed without being published in the form of books, and thus the acting or dramatic copyright is in force, while as to literary copyright, such plays and pieces retain the character of unpublished manuscripts. Music printed and published becomes a book for the purpose of the literary copyright, and so, we presume, does a play; but it is a question what becomes of the performing copyright on the publication of the work as a book; and there is a further question, whether the performing copyright can be gained at all, if the piece is printed and published as a book before being publicly performed.

"With regard to the duration of copyright in dramatic pieces and musical compositions, we recommend that both the performing right and the literary right should be the same as for books.

"We further propose, in order to avoid the disunion between the literary and the performing rights in musical compositions and dramatic pieces, that the printed publication of such works should give dramatic or performing rights, and that public

(*a*) Drone's 'Law of Copyright and Playright' (Amer.) 607. The point was raised, but not decided, in the case of *Boosey* v. *Fairlie* (1877), 7 Ch. Div. 316.

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performance should give literary copyright. For a similar reason it would be desirable that the author of the words of songs, as distinguished from the music, should have no copyright in representation or publication with the music, except by special agreement" (*a*).

The doubt expressed in the above report as to the performing right when the piece has been first printed and published as a book is not well founded, it having been decided that the publication in this country of a dramatic piece or musical composition as a book before it has been publicly represented or performed, does not since the Act of 1842 deprive the author or his assignee of the exclusive right of representing it or performing it (*b*).

Musical performing rights must now be expressly reserved.

The performing rights in the case of dramatic compositions are, generally, more valuable than the copyright, but the author of a musical composition generally looks for his profits to the sale of copies of his work, and consequently is the better pleased the more often it is publicly performed. The fact, however, that strictly the public performance of a copyright song or piece of music was an infringement of the author's rights led to many abuses which were sought to be remedied by the Copyright (Musical Compositions) Act, 1882 (*c*), which requires that musical performing rights must be expressly stated to be reserved on the title page of every published copy of the work.

It is provided by section 1 of this Act that if the proprietor of the copyright in any *musical composition* first published after the passing of the Act, or his assignee, shall be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, he must notify the same in print on the title-page of every published copy of such musical composition.

Where copyright and performing right in different persons.

By section 2 it is provided that if before publication the right of public representation or performance be, and the copyright be, vested in different owners, and and the former desire to retain the right of public representation or performance, he must, before publication, give to the owner of the copyright notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; and further, that if after publication, subsequent to the Act, the right of public representation or performance and the copyright, shall become separated and vested in different

(*a*) Par. 72–75.
(*b*) *Chappell* v. *Boosey* (1882), 21 Ch. D. 232.
(*c*) 45 & 46 Vict. c. 40.

owners, and such notice shall have been duly printed on all copies published after the Act previously to such vesting, then, if the owner of the right of public representation or performance desire to retain the same, he must before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright is vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Failure of copyright owner to print notice of reserve.

By the 3rd section, if the owner of the copyright, after due notice being given to him or his predecessor in title at the time and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then the owner of the copyright at the time of the happening of such neglect or default is to forfeit and pay to the owner of the right of public representation or performance of such composition the sum of £20. This penalty is a fixed one; and in some cases will be too much and in others too little. But no discretion seems to be given to the court.

Effect of failure to print notice of reserve.

Though it will be noticed that the above Act does not declare what is to happen if the owner of the performing right does not have printed upon every copy of a musical composition a notice that the right of public representation is reserved, yet it seems reasonably clear that the effect is that he only retains the right and is able to sue for infringement if he does so (*a*). A statement, "This song may be sung without fee or licence except at music-halls," is a reservation of the right of representation only so far as music-halls are concerned (*b*), and even if the musical piece in question be also a dramatic piece within the Act of William IV. the reservation must be made (*c*).

When penalties are incurred.

The penalties provided by section 2 of the Dramatic Copyright Act in the case of dramatic compositions are only incurred if the representation be without the *consent in writing of the author or other proprietor*. The consent may be given by the author's agent, and it has been decided that the Dramatic Authors' Society is agent to its members, for the purpose of

(*a*) *Fuller* v. *Blackpool Winter Gardens* (1895), 2 Q. B. 429, 441.

(*b*) *Ib.* In a case of *Moul* v. *Coronet Theatre* (Times, 11th Dec., 1901; on appeal, Times, 4th Feb., 1903), it was suggested that a notice in French, printed in small type, was not a compliance with the Act. This is important from an international point of view.

(*c*) *Fuller* v. *Blackpool Winter Gardens*, *supra*.

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authorising managers of theatres to perform pieces composed by its members (*a*).

The consent may apply to works not in existence at the time it is given. It is not as it is under the Statute of Frauds, which expressly requires that the contract shall be signed by the party to be charged; and even that is satisfied, if it is signed in his name by an agent duly authorized so to sign. It is very rarely the case that a document required by the law need be wholly in the handwriting of the party on whose behalf it is to be given. The present statute does not require signature, nor the *handwriting* of the author. All that it requires is that there should be his consent, and that it should appear in writing (*b*).

Consent where several owners of copyright.

Where there are several owners of a copyright, consent must be obtained from all, one co-owner cannot grant a licence in respect of that which really belongs to two. Thus in an action by the co-owners of a moiety of the copyright of an opera to restrain the defendant, who on the evidence in the case had only a licence from the other co-owner, from representing it, and for damages, the Master of the Rolls held that the plaintiffs were entitled to sustain the action and to recover a moiety of the statutory penalty of £2 a night for each representation (*c*).

Whether performance must be at a place of dramatic entertainment.

It will be observed that the 3 & 4 Will. IV. c. 15 limits the unlawful representation to a "place of dramatic entertainment," whereas the 5 & 6 Vict. c. 45, ss. 20 and 21, makes no mention of such a condition. In the case of a dramatic composition, however, the point is immaterial, for the mere performance of a dramatic piece makes the place where it is performed a place of dramatic entertainment. This was decided in the case of *Russell* v. *Smith* (*d*), where, indeed, the subject matter of the dispute was a song, but one which the court held to be a dramatic composition within the meaning of the 3 & 4 Will. IV. c. 15 (*e*).

(*a*) Dramatic pieces.

Mr. Russell, who was the composer of a song called 'The Ship on Fire,' brought an action against a man of the name of Smith for singing the same song, among others, at an entertainment which he opened at Crosby Hall, Bishopsgate, and to which he gave admission by shilling and two-shilling

(*a*) *Morelon* v. *Copeland* (1855), 16 C. B. 517; S. C. 24 L. J. (C.P.) 169; *Fitzball* v. *Brooke* (1845), 2 Dow. & Lown. 477; *Shepherd* v. *Conquest* (1856), 25 L. J. (C.P.) 127; 17 C. B. 427.

(*b*) *Per* Maule, J., in *Morelon* v. *Copeland*, *supra*.

(*c*) *Powell* v. *Head* (1879), 12 Ch. D. 686; 48 L. J. Ch. 731; 41 L. T. 70.

(*d*) (1848), 12 Q. B. 217.

(*e*) As to when a song is a dramatic composition see *post*.

tickets. The building called Crosby Hall belonged to a literary institution, and contained a large room in which elocution classes met periodically, but which, at other times, was let out for concerts and musical entertainments. It had been hired for recitations intermixed with songs, and for performances of ventriloquy; and a music licence had been taken out for it under statute 25 Geo. II. c. 36. On the trial it was objected that Crosby Hall was not "a place of dramatic entertainment" within the meaning of statute 3 & 4 Will. IV. c. 15, s. 1, referred to by statute 5 & 6 Vict. c. 45, s. 20. But Lord Denman held, that as Crosby Hall was used for the public representation for profit of a dramatic piece, it became a place of dramatic entertainment for the time being within the statutes in question. "The use for the time in question," added the learned chief justice, "and not for a former time, is the essential fact. As a regular theatre may be a lecture-room, dining-room, ball-room, and concert-room on successive days, so a room used ordinarily for either of those purposes would become for the time being a theatre, if used for the representations of a regular stage play (*a*). In this sense, as 'The Ship on Fire' was a dramatic piece in our view, Crosby Hall, when used for the public representation and performance of it for profit, became a place of dramatic entertainment."

(b) Musical compositions.

The question whether an unauthorized performance of a musical composition is unlawful only when it takes place, at "a place of dramatic entertainment," was raised and decided in the negative in the case of *Wall* v. *Taylor* (*b*). There the plaintiff had the exclusive right of singing a song entitled the 'Will o' the Wisp.' The song was sung without the consent of the plaintiff at a concert, and at a place not used on any other occasion as a "place of dramatic entertainment." For the plaintiff it was said that the song was a "dramatic song" within the meaning of the 5 & 6 Vict. c. 45, and that it had been publicly performed or represented, and that therefore he was entitled to the penalty of 40*s*. On the other hand, it was argued that, assuming the song was one to the performance of which the plaintiff had an exclusive right, yet inasmuch as it was sung at a place which was not a "place of dramatic entertainment," the plaintiff was not entitled to recover any penalty, but only the amount of such damages as he had suffered.

(*a*) In the same case Patteson, J., remarked that "the street where 'Punch' is performed is for the time being a place of dramatic entertainment." See *Duck* v. *Bates* (1884), 12 Q. B. D. 79; 13 Q. B. D. 843; 49 L. T. 507: 32 W. R. 169.

(*b*) (1883), 9 Q. B. D. 727; 11 Q. B. D. 102; 47 L. T. 47; 51 L. J. (Q.B.) 547; 52 L. J. 213, 558; 31 W. R. 712. In *Duck* v. *Bates*, *supra*, it was thought that the *dicta* of Brett, M.R., in the above case were too wide.

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The Court held that the proprietor of the right of performance was entitled to the penalty given by the Dramatic Copyright Act even though the musical composition had not been represented at "a place of dramatic entertainment."

Private performances not infringement.

But in order that the performance of a composition, whether it be musical or dramatic, may be an infringement of the rights of the proprietors, it is necessary that it takes place in public, a strictly private performance not entitling the proprietors to sue either for penalties or damages.

Yet a representation may be regarded as a public one, though the privilege of admission be denied to the general public and extended only to certain persons. And though the fact that no charge is made for admission is no doubt one ingredient in determining whether the performance be public or private, yet it cannot in all cases be taken as conclusive. For as the object of the law is to protect the proprietor of the copyright from injury, a performance nominally private, but in reality public, whether a charge be made for admission or not, would be restrained, on the ground that it might be as injurious to the proprietor as if the representation had been public. "Private Theatricals" are sometimes given by amateur performers in a place of public amusement to which a charge is made for admission. This undoubtedly would be regarded as a representation in public, although only invited persons or members of a certain society were privileged to buy tickets of admission.

In a case, however, where the performance was in the room of a hospital by amateurs for the entertainment of the nurses and others connected with the institution, free, though the governors of the hospital paid for seats, the Court held that the room where the drama was represented was not a place of public entertainment, and consequently the performers were not liable to damages or penalties under the Acts (*a*).

In the case last referred to the Master of the Rolls said: "It is not necessary that there should be profit made by the representation." He considered that the place need not be habitually kept for the exhibition of dramatic entertainments. A representation in a nursery by children, or by grown-up persons in a drawing-room, is not an infringement because it is obviously domestic and private. So, too, a "representation for the amusement of friends in an unfurnished house hired for

(*a*) *Duck* v. *Bates* (1884), 12 Q. B. D. 79; 13 Q. B. D. 843; 49 L. T. 507; 32 W. R. 169; *Wall* v. *Taylor*, *Wall* v. *Martin* (1883), 9 Q. B. D. 727; 11 Q. B. D. 102; 47 L. T. 47; 51 L. J. (Q.B.D.) 547.

the occasion." The representation in that case is also "domestic and private." There must be present a sufficient part of the public who would also go to a performance licensed by the author as a commercial transaction. Suppose a member for a Parliamentary borough organizes dramatic entertainments to which the inhabitants are admitted without payment. Suppose an amateur company act some dramas for a charitable object, with admission upon payment of money or by tickets issued generally. In each of these cases an infringement of the Statute has been committed. Fry, L.J., while agreeing that the place need not be habitually used for dramatic entertainments and that the representation need not be for reward or hire, differed as to the necessity for publicity, holding that "there may be internal and domestic representations which are well within the purview of the statute, as when a nobleman gives a dramatic performance in his mansion to guests staying in his house, and to invited residents in the neighbourhood——what would be the chance of the next company which came to the adjoining town to perform the same piece, getting together as good an audience as they could get had the piece not been performed in the nobleman's mansion?" Though we would answer that in the case put by Lord Justice Fry we should conceive the chance to be very great indeed that the performance were all the better attended by reason of the approval in high society it had previously received, this is not the point. The point which might have been elucidated with a little less doubtful illustration is that the real test as to what is a place of dramatic entertainment is whether the representation diminishes the pecuniary gains of the proprietor of the copyright or not.

If amateurs forming a society or a club produce a dramatic composition amongst themselves, they are liable to pay fees to the author even though no money be received at the doors. The taking of money, though it is not a necessary, is an important, element in determining whether the place of representation is a public place or not.

In an action for penalties brought under the 3 & 4 Will. IV. c. 15, the declaration stated that the plaintiff was the author of a certain dramatic piece or musical composition, &c., and that the defendant caused the said piece to be represented at a certain place of dramatic entertainment, &c., whereby, &c. It was determined, first, that the introduction of a pantomime was a dramatic entertainment, within the meaning of the statute; secondly, that it was not necessary to allege in the

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declaration, or to prove at the trial, that the defendant knew that the plaintiff was the author; thirdly, that the allegation in the declaration, that the same was represented at a certain place of dramatic entertainment, was sufficient (*a*).

Punishment for infringement not to be visited on one not actually taking part in the performance.

Though it was here decided that a person ignorant of the piratical nature of a representation may be an offender within the meaning of the Act, yet one cannot be considered a transgressor of the provisions of the statute, so as to subject himself to ar tion of tho above nature, unless he himself, or his agent, actually takes part in the representation which is a violation of copyright. Were it to be otherwise held, all those who supply any of the means of representation to him who actually represents, would have to be considered as thereby constituting him their agent, and thus *causing* the representation, within the meaning of the Act; such a doctrine would embrace a class of persons not at all intended by the legislature (*b*).

Liability of person letting for hire a place of dramatic entertainment.

A person who lets for hire by the evening a place of dramatic entertainment for the public performance of songs and music, and provides the hirer, who performs songs and music which he has not liberty to perform, with lights, benches, &c., is not liable to pay damages to the author for causing or permitting to be represented or performed a musical composition without the author's written consent (*c*).

This doctrine was followed in *Lyon* v. *Knowles* (*d*). The defendant, the proprietor of a theatre, allowed one Dillon to have the use of it for the purpose of dramatic entertainments. The defendant provided the band, the scene-shifters, the supernumeraries, the money-takers, and paid for printing and advertising. Dillon employed his own company of actors and actresses, and selected the pieces which were to be represented, free from control on the part of the defendant. It was arranged that the money taken at the doors should be divided equally between the defendant and Dillon. During the period of such occupation of the theatre by Dillon, certain pieces were performed which the plaintiff had the sole liberty of representing or causing to be represented; and it was held, in an action to recover the penalties imposed by the above sections, that the plaintiff could not recover, inasmuch as, under the circumstances, the defendant was not shown to have represented, directly or indirectly, the said dramatic

(*a*) *Russell* v. *Briant* (1849), 19 L. J. (C. P.) 33; 14 Jurist, 201; 8 C. B. 836.
(*b*) *Ib.* (*c*) *Ib.*
(*d*) (1863), 11 W. R. 266; 32 L. J. (Q.B.) 71; 10 L. T. (N.S.) 876; *French* v. *Day* (1893), 9 T. L. R. 548; *Kelly* v. *Gavin* (1902), 1 Ch. 631.

pieces. If the representation of the pieces could have been considered a joint act of the defendant and Dillon, the defendant would have been liable. The defendant had no right to interfere in the choice of the pieces to be represented; and in short, though the proprietor, he was not the manager. Neither was he a partner; for the receipt of the moneys at the door was a receipt of gross proceeds, not net profits, and was merely a mode of receiving and securing the rent. There was an agreement between them to divide the gross receipts in lieu of payment of a specific sum as rent. But this did not make them partners. The defendant, then, having no control over the performances, could not be said to have caused them to be represented, and was consequently not liable. The defendant, to have been made liable, must have been shown to have been either the partner or principal of Dillon, the person who actually directed the representation (*a*).

In another case (*b*) the defendant was the owner and manager of the Grecian Theatre, and for £30 he had let for one night to his son, who was the stage manager, the use of the theatre, company, and all persons employed. The son selected and brought out a play, for which representation the court held the defendant liable. The judgment was based on the fact that the defendant had the control and management of the theatre and the company during that performance. "I think," said Erle, C.J., "the defendant is responsible for that representation. He was the proprietor of the theatre, and had entire control over the establishment and all belonging to it; and what was done by his son was done by his permission. The case of *Lyon* v. *Knowles* seems to me to recognise that distinction. There the defendant merely let his theatre with the scenery, scene-shifters, bands, lights, &c., to Dillon, who brought his own company to represent pieces of his own selection, the plaintiff having no control whatever over any person employed in the representation. Here, however, the piece is performed by the defendant's own *corps dramatique*, his son being one of them; and the performance takes place for the defendant's profit to the extent of £30. I think, therefore, it is impossible to say that the defendant did not cause the piece to be represented."

So in another case (*c*) the defendant was the proprietor of a music-hall, and had engaged a singer who on numerous occasions

(*a*) *Lyon* v. *Knowles* (1863), 11 W. R. 266; 3 B. & S. 556; affirmed on appeal 5 B. & S. 751; 12 W. R. 1083; 10 L. T. (N.S.), 876.

(*b*) *Marsh* v. *Conquest* (1864), 17 C. B. 418. See *Parsons* v. *Chapman* (1831), 5 C. & P. 33.

(*c*) *Monaghan* v. *Taylor* (1885), 2 T. L. R. 685.

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sang a song called 'We are going to reform some day,' the copyright of which was in the plaintiff as assignee. The defendant at the trial denied that he had directed the song to be sung; he was in the hall when it was being sung, but had never heard the whole of it. The court held, that inasmuch as the singer was hired by the defendant to sing what songs he liked and no supervision or control was exercised as to copyright, there was evidence of agency and authority to sing the song complained of.

It was argued that an authority to do an unlawful act could not be presumed, and that the presumption should be, that under a general or implied permission to sing what the artiste chose, only songs which could not be lawfully sung would be selected; but it was considered that there having been a general permission by the defendant to sing, the true inference was that he took the chance of the songs sung being such as could be lawfully or unlawfully sung.

Copyright (Musical compositions) Act, 1888.

As regards musical compositions these cases are now met by the recent statute, 51 & 52 Vict. c. 17, the Copyright (Musical Compositions) Act, 1888, the 3rd section of which provides that the proprietor, tenant, or occupier of any place of dramatic entertainment or other place at which any unauthorized representation or performance of any musical composition, whether published before or after the passing of the Act, shall take place, shall not by reason of such representation or performance be liable to any penalty or damages in respect thereof, unless he shall wilfully cause or permit such unauthorized representation or performance knowing it to be unauthorized. But the provisions of the Act are not to apply to any action or proceedings in respect of a representation or performance of any opera or stage play in any theatre or other place of public entertainment duly licensed in that respect.

"Wilfully" causing or permitting performance.

In a recent case the proprietor of the performing rights in a valse called the 'Valse Bleu' sued the defendants, the proprietors of a theatre, for infringements of his rights by performing the valse at their theatre in the interval between the acts. There was a notice, printed in French, on every copy of the valse reserving the performing rights, but it was stated by the defendant's witnesses that they did not know of this, and that, when they heard of it, the performance of the music was immediately stopped. There was evidence that the conductor of the orchestra did know of the reservation, and that there had been some negotiations as to the fees that ought to be paid to the plaintiff for the right of performance; but

Mr. Justice Wright held that the plaintiff had not proved that the defendants had "wilfully" caused or permitted the performance of the music in question, knowing it to be unauthorized, and the Court of Appeal, holding the question to be one of fact, upheld this decision (*a*).

What is a dramatic composition.

The Act of William IV. gives to the authors of "any tragedy, comedy, play, opera, farce, or other dramatic piece or entertainment," the sole liberty of representing it. This right is affirmed by the statute of Victoria, which further declares that "the words 'dramatic piece' shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment."

The above terms are not very distinct, and questions have arisen as to what is, or is not included in the "or other scenic, musical, or dramatic entertainment."

A work not intended for the stage may be in substance a drama, and may be easily adapted for representation. Is it excluded from the operation of the statute, because it is not in form and name a drama? Again, if fitness for public performance is the test of a dramatic composition, are songs within the purview of the statute? Though hardly dramatic compositions in the ordinary acceptation of the term, they seem to come within the words "musical entertainment." Whether a production is called a poem, or a tragedy, or novel, or a comedy, a history, or a drama, or whether its author did or did not intend it for public representation, is immaterial in ascertaining whether it is a dramatic composition. This question is determined by the character of the work, and not by what it is called, or the purpose for which the author has intended it. So also it is immaterial whether the words of a drama are spoken or sung; whether they are or are not accompanied with instrumental music. An opera, not less than a play without music, is a drama. The judicial construction given to "dramatic piece," as used and defined in the statute, is broad enough to embrace every composition which is dramatic in character and is suitable to be performed, recited, read, or sung for the entertainment of an audience. Thus it has been decided that a song which related the burning of a ship at sea, and the escape of those on board, describing their feelings in vehement language, and sometimes expressing them in the supposed words of the suffering parties, is dramatic, and consequently within the meaning of the statute, even though it be

(*a*) *Moul* v. *Coronet Theatre, Ltd.*, Times, 11th Dec., 1901; on appeal, Times, 4th Feb., 1903.

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sung by one person only, sitting at a piano, giving effect to the verses by the delivery, but not assisted by scenery or appropriate dress (*a*).

That the whole is expressed in music makes no difference. The early Greek drama was musical throughout; so in the modern Italian opera. Nor can any distinction arise from the want of scenery or appropriate dress: an oratorio has neither, yet it is often dramatic. Nor, again, is it material that no second person performs. No one would suggest that Mr. Mathews' representations, or the readings of Shakespeare by Mrs. Siddons or Mr. Charles Kemble, were not dramatic. The character of Elijah is essentially a dramatic one, requiring, however, not dramatic action, but dramatic sentiment, in order to delineate it. Sometimes the wrath and gloom of such a character must be displayed, at other times the most pathetic tenderness. If the character of drama were denied to this species of entertainment, nothing short of requiring all the ingredients of a play would be admitted as a dramatic representation. If the interpretation clause of statute 5 & 6 Vict. c. 45 be referred to, it will be remarked that the 2nd section declares that "dramatic pieces" within that Act include "tragedy, comedy, play, opera, farce," or "other scenic, musical, or dramatic entertainment." These words comprehend any piece which can be called dramatic in its widest sense; any piece which, on being presented by any performer to an audience, will produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience (*b*).

In *Clark* v. *Bishop*, the court held the song, 'Come to Peckham Rye,' which has little, if any, of the dramatic character, to be a dramatic piece (*c*). Some doubt, however, as to the correctness of the earlier decisions seems to be raised by the recent case of *Fuller* v. *Blackpool Winter Gardens* (*d*), where the court held that the song, 'Daisy Bell,' sung at the defendant's theatre, in costume and in a dramatic play or burlesque during the run of the piece, was not a dramatic piece. The point, however, does not appear to be of great importance, for it seems reasonably clear that all songs will be protected under either the Dramatic or the Literary Copyright Acts, and the court held, in the last cited case, that even if a song be a dramatic piece it is also a musical composition, the performing

(*a*) (1848), *Russell* v. *Smith*, 12 Q. B. 217.
(*b*) Lord Denman, C.J., in *Russell* v. *Smith* (1848), 12 Q. B. 217; 17 L. J. (Q.B.) 225.
(*c*) *Clark* v. *Bishop* (1872), 25 L. T. 908.
(*d*) (1895), 2 Q. B. 429.

rights in which ought to be expressly reserved under the Musical Compositions Act, 1882.

Recitations.

The statute under consideration does not, however, protect a literary production which is not a musical or dramatic composition, and the author has no remedy against any person who publicly reads or recites such production (*a*). Of course this applies only to published works, for the unauthorized public reading of any unpublished production, whether a dramatic composition or not, would be a violation of the owner's common law rights in the manuscript.

Copyright in spectacular piece.

A spectacular piece is within the protection afforded by the statute. Thus in a case to be hereafter more fully considered, where it appeared that the defendant had taken from the plaintiff's play two scenes or situations, consisting more of scenic effects than of dialogue, Mr. Justice Brett said: "Now, it was first said that the subject matter of the action was not the subject matter of copyright; that the Act gives a property in words, and not in situations and scenic effects; but I think that these latter are more peculiarly the subject of copyright than the words themselves (*b*).

Adaptation of old play.

Copyright may be secured in the adaptation of a play which is itself common property. Thus in *Hatton* v. *Kean*, where it appeared that the defendant had designed a dramatic representation, consisting of one of Shakespeare's plays, with certain alterations in the text, original music, scenic effects, and other accessories, the court did not doubt that the production, as a whole, was a proper subject of copyright, although the play itself was, in its original form, common property (*c*).

Translation of foreign drama.

A translation of a foreign play not entitled to protection in this country under the International Copyright Acts will receive the same protection as an original drama. Any number of persons may dramatize or translate a work which is common property, or, with the consent of the owner of the copyright, a work wherein copyright exists, and whatever may be the similarity between two dramatizations, adaptations, or translations, each dramatist will have copyright in his own version.

New arrangement of music.

So in the case of musical compositions, not only an original composition but any substantially new arrangement or adaptation of an old piece of music is a proper subject of copyright; and the man who makes the new arrangement or adaptation is the "author" of it and entitled to the copyright. If A. makes

(*a*) See per *Stirling, J.*, *Hanfstaengl* v. *Empire* (1894), 3 Ch. at p. 116.
(*b*) *Chatterton* v. *Cave* (1877), 33 L. T. 256; *Tree* v. *Bowkett* (1896), 74 L. T. 77.
(*c*) (1859), 7 C. B. 268.

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a pianoforte score of the music of B.'s opera (*a*), or if he writes words and accompaniments to an old non-copyright melody (*b*) A is, in either case, properly described as the author of the new composition.

The same remarks apply to the case of writing libretti to the music of non-copyright operas, oratorios, or cantatas.

The pianoforte score of an opera.

The pianoforte score of an already existing opera, whether arranged by the composer himself or by another person, is the subject of copyright; and as such is entitled to protection, provided the arranger had a right so to use the original. The arrangement of the opera score for the pianoforte, involving as it does labour as well as intelligence and skill, constitutes it a new work (*c*).

In deciding the point in the last cited case Sir A. Cockburn, C.J., said: "It seems impossible to believe that any musician, however great his talent, whether as a composer or an executant, from the mere circumstance of having the opera in its entirety before him, that is to say, with all the score for all the instruments, which neither eye nor mind could take in at the same time, could be able to play the accompaniment while singing the music of the opera at the piano. It requires time, reflection, skill, and mind so to condense the opera score as to compose the pianoforte accompaniment. . . . . I cannot, therefore, bring myself to think that the pianoforte arrangement of the music of an opera, which originally consisted of vocal music and instrumentation to be executed by some half-hundred instruments, can be said to be anything else than a specific, separate, and distinct work from the opera itself. And it seems to me to hold otherwise would lead to very serious consequences. Operas are very frequently arranged sometimes by the composer of the opera himself, sometimes by other persons, with the consent or without the consent of the original composer. It may be, if the arrangement be made

(*a*) *Wood* v. *Boosey* (1868), L. R. 2 Q. B. 340; *Atwill* v. *Ferrett* 2 Blatch. (Amer.) 39.

(*b*) *Leader* v. *Purday* (1849), 7 C. B. 4.

(*c*) *Wood* v. *Boosey* (1868), L. R. 2 Q. B. 340; 7 B. & S. 869; 36 L. J. (Q.B.) 103; 15 W. R. 309; 15 L. T. (N.S.) 530; affirmed 9 B. & S. 175; L. R. 3 Q. B. 223; 37 L. J. (Q.B.) 84; 16 W. R. 485; 18 L. T. (N.S.) 105; *Boosey* v. *Fairlie* (1877), 7 Ch. Div. 301; 14 App. C. 714. In Renouard's '*Traité des Droits d'Auteurs*,' tome ii. p. 190, pt. iv. ch. 2, p. 78, it is said: "*Des arrangements, variations, valses, contredanses, etc., composés sur un thème, un air, un motif même appartenant au domaine public; des pots-pourris, sorte de compilation musicale, disposés dans un certain ordre et avec certaines liaisons ou transitions, sont-ils des objets de privilège? Je n'hésite pas à croire que la solution affirmative résulte des principes généraux sur la matière, exposés au commencement de ce chapitre. Il résulte des mêmes principes que ces compositions ne conféreront un privilège qu'autant qu'elles supposeront de l'art, du travail, un effort d'intelligence; qu'elles seront, en un mot, une production de l'esprit.*"

without the consent of the composer of the opera, such an adaptation would be an infringement of his copyright, which would subject the adapter to an action. It is not necessary to decide that. But it may be that, after the copyright has expired, an arrangement for the pianoforte may be made in the first instance, or some musical composer, thinking that an arrangement that already existed of some well-known and popular opera is not as good as it can be made, might apply his hand to the work and make a new arrangement. Can it be said that such an arrangement, useful as regards the musical world, shall not be the subject of protection under the Copyright Acts?"

Difference between pianoforte score and original score.

And on appeal Sir Fitzroy Kelly, C.B. (*a*), in affirming the decision of the Queen's Bench, clearly pointed out the difference between the pianoforte score and the original score, and the fact that each might be the subject of copyright. "The opera," said he, "is composed and is published in score, and contains in each line of what is called the entire score, the music for some one particular instrument, these instruments being some twenty in number. Now let us come to what the arrangement is for the pianoforte. Undoubtedly there are portions of it which are identical, as in the case before the Exchequer, and might subject, as I have already observed, the author of the adaptation to an action if it had been published without the authority of the author of the opera. But what is the pianoforte arrangement? It is an arrangement of the whole of the music of this opera for the pianoforte, a part of which is the ordinary pianoforte accompaniment, the bass and the treble, played with both hands, and which is independent of the melody. There may be, as it appears, the line of music for one voice, or two or three voices, as the case may be; and there are separate and distinct lines for the accompaniment for the pianoforte; and no doubt, here and there throughout this accompaniment, and by going line by line through the score of the original opera, there may be found the same notes; but there are other parts of the accompaniment which are merely the pianoforte accompaniment, the notes forming which are nowhere to be found in the score at all. The accompaniment for the pianoforte is a work of greater or less skill. In some cases, perhaps in many cases—it may be in this for aught I know—the operation of adaptation is little more than mechanical, and what any one acquainted with the science of music, any composer of experience, might have been

(*a*) L. R. 3 Q. B. 223, 229; 15 L. T. (N.S.) 530.

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able to do without difficulty; but it may be, and often is, as in the case of the six operas of Mozart, by Mazzinghi, a work—I would hardly use the term of great genius, but a work—of great merit and skill of that eminent composer and pianist, Mazzinghi. If such a work be published as the adaptation to the pianoforte by a composer, other than the composer of the original opera, no doubt it is a piracy of the opera, and the composer may maintain an action against the adapter or the publisher of the adaptation; but, whenever the copyright in the original opera has expired, if after that, and for the first time, another composer composes another adaptation of that opera to the pianoforte, it is a new substantive work, in respect of which he is just as much entitled to the benefit of the copyright in this country, as the original composer of the opera; and if any one had by an adaptation pirated that arrangement, he would be liable to an action for that piracy. I consider that an infallible test to show the difference between the one work and the other—between the original opera and the arrangement of it for the pianoforte. It is perfectly clear, therefore, that in point of fact—for it is rather a matter of fact than anything else—the adaptation to the pianoforte, or the arrangement for the pianoforte, of an opera already published, is itself a new and separate work, and is not one and the same with the original opera" (*a*).

So also with reference to a piece of music called 'Pestal,' which had been played by the military bands in the style of a Russian Polonaise. The plaintiff, in an action for infringement, had obtained possession of the score, it did not transpire how—set it to words, concocted a thrilling introductory anecdote, and sold the copyright to a music-seller who published it with success. Other publishers arranged new versions of song and verses, for which the proprietor recovered damages. The coincidence between the harmonies and accompaniments in such a case, must be relied on as forming the part alone in which copyright exists. The original composition, if not claimed by any one, becomes public property; and one person has as much right to publish it as another (*b*).

Of late years the increase of mechanical devices for repro-

(*a*) In this same case Bramwell, B., said: "It has been said that there is nothing inventive on the part of the person who makes the arrangement. In one sense, there is not—that is to say, he neither invents the tune nor the harmony; but there is invention in another sense, or rather there is composition in the adaptation to the particular instrument. Of that, the adapter is the author, and it is perfectly certain that the man who wanted to arrange this opera for a pianoforte would find it a great deal easier to copy what Brissler had done than to take the score and do it over again." (*b*) *Leader* v. *Purday* (1849), 7 C. B. 4.

Pianolas and æolian organs.

ducing musical airs has led to the inquiry how far these devices are infringements of copyright. In the case of *Boosey* v. *Wright* the defendant sold for use in a mechanical wind instrument, called an "æolian," perforated rolls of paper, which represented the instrumental music of certain songs in the music of which the plaintiffs had the copyright. The rolls were inserted in the instrument, and were unrolled by its action, and the passage of air through the slots in the rolls into the pipes of the instrument produced musical sounds, the pitch and duration of which were determined by the position and length of the slots. The instrument also contained stops, swells, and pedals, whereby variations of time and expression could be effected at the will of the performer; and in the margin of some of the rolls there appeared directions as to time and expression which were also to be found in the plaintiffs' songs. For the plaintiffs it was contended that these perforated rolls were sheets of music within the Copyright Act, 1842, for the defendants that they were strictly part of a machine, and consequently not within the scope of the Copyright Acts. Mr. Justice Stirling held that the Act of 1842, fairly construed, did not prevent the defendants from making and selling these rolls, so far as they contained perforations, but that in adding to them words taken from the plaintiffs' music sheets, for the purpose of indicating to the player on the instrument the pace and expression at and with which the music ought to be played, the defendants had gone beyond their rights, and he granted an injunction to restrain them from so doing (*a*). On appeal, this decision was affirmed as to the perforations and reversed as to the words (*b*). The Master of the Rolls, in his judgment, after remarking that though the plaintiffs had the exclusive right of printing or otherwise multiplying copies of their sheets of music, they had no exclusive right to the production of the sounds indicated by or on those sheets of music; nor to the performance in private of the music indicated by such sheets; nor to any mechanism for the production of such sounds or music, went on to say: "Conceding for the sake of argument that a person might be trained to play or even to sing from the perforated sheets, it is clear that they are not made to be so used, nor are they ever so used, in fact; and we ought, in my opinion, to deal with the case on broad business lines and not on unpractical, though theoretically possible, assumptions. If these perforated rolls were new, it appears to me that their invention might be patented; and this could not, in my opinion, be said of any copy

(*a*) *Boosey* v. *Wright* (1899), 1 Ch. 836. (*b*) (1900), 1 Ch. 122.

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of any book. It may be true that the manufacture and sale of the perforated sheets diminish the sale of the plaintiffs' sheets of music. But it does not follow that the plaintiffs' copyright has been infringed; and I am of opinion that it has not. I regard the defendants' perforated sheets as part of a mechanical contrivance for producing musical notes; and I cannot think that manufacturers of musical instruments infringe any person's copyright by so constructing their machines and appliances to be used with them as to produce musical notes indicated on a sheet of music." As to the directions on the rolls he considered that they were not a "sheet of letterpress separately published," or if they were, they did not form a literary composition entitled to protection (*a*).

This decision, of course, does not touch the performing right.

The adaptation of words and accompaniment to an old air.

In *Leader* v. *Purday* (*b*), it was held that one who adapts words to an old air, and procures a friend to compose an accompaniment thereto, acquires a copyright in both words and accompaniment, and his assignee in declaring for an infringement, may describe himself proprietor of the copyright in the whole composition. So in *Chappell* v. *Sheard* (*c*), where new words had been adapted to an old American melody known as 'Lillie Dale,' in which there was no copyright, to which was added a symphony and accompaniments, and a cadence at the close, and entitled, 'Minnie,' with a portrait of Madame Anna Thillon; and the defendant published a song to the same air, and called it 'Minnie Dale,' with a similar portrait, but different words, and represented it as having been sung by the same lady, whereas in truth this song had never been sung by her, it was held that the plaintiff had obtained a right of property in the name and description of his song, which a Court of Equity, as in the case of dramatic representations and literature, would restrain any person from infringing; and that the publication of the defendant's song, was a palpable attempt to induce the public to believe that the song so published was the same as that of the first publisher. In another suit (*d*), where the facts were nearly similar, and the title 'Minnie, dear Minnie,' it was held to be an obvious attempt to pass off the defendant's publication for that of the plaintiff which had obtained the public favour. Neither could the defendant escape his liability by cautioning his shopmen to explain to purchasers that his song was not the same as the plaintiff's, because he could not secure that

(*a*) Cf. *Hollinrake* v. *Truswell* (1894), 3 Ch. 420, and see Art. 3 Final Protocol Berne Convention.
(*b*) (1849), 7 C. B. 4.
(*c*) (1855), 2 K. & J. 117.
(*d*) *Ibid.* 123.

retail dealers purchasing from him would give the same information to their customers (*a*). But the court refused to extend the injunction to restrain the piracy of two bars of music which had been added by the plaintiff to the original air, until the fact had been established by a trial at law. The principle here expressed appears to be that where a great resemblance exists between a spurious article and the genuine, although the articles may not be exactly alike, yet if there be that which conveys the idea that the article is genuine, whereby the public is deceived, it is a colourable representation of the original, and a piracy of the author's copyright.

We will now consider what will be a piracy of a musical or dramatic work.

Though the words in the Act 3 & 4 Will. IV. imposed the penalties there specified upon any who may pirate any protected "production or any part thereof," yet it was not necessarily intended to prevent the copying and reproduction of every and any part without regard to its importance. At the same time it does not follow that either the very language of the original drama, or a very considerable portion of it, must be appropriated in order to bring the case within the statute.

Principal decisions on questions of piracy under the Act of Will. IV.

In considering and judging of what amount of copying or imitation would constitute piracy, similar rules to those already laid down with reference to copyright in books may be applied to the authors and owners of dramatic productions, for it would seem to be a proper rule to apply the same principle of construction to statutes which aim at objects substantially the same. The question of materiality must depend upon a consideration of the quantity and value of the portion taken or use made, and must vary indefinitely in various circumstances. As Lord Chancellor Cottenham said in *Bramwell* v. *Halcomb* (*b*): "It is useless to refer to any particular cases as to quantity." The quantity taken may be great or small, but if it comprise a material portion of the book, it is taken illegally. The question is as to the substance of the thing, and if there be no abstraction of that which may be substantially appreciated, no penalty is incurred. In all cases, the matter is dealt with as one of degree. In all, quantity and value are both the subjects of consideration, and in none of them has an infringement been established without satisfactory evidence of an appropriation, possibly involving a substantial loss to one person, and a substantial gain to another.

(*a*) See *Sykes* v. *Sykes* (1825), 3 B. & C. 441.
(*b*) (1836), 3 My. & Cr. 738; *Beere* v. *Ellis* (1889), 5 T. L. R. 330.

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The question in every case must be a question of fact, and therefore one for a jury.

The two principal cases under the 3 & 4 Will. IV. c. 15, are the cases of *Planché* v. *Braham* (*a*), and *Chatterton* v. *Cave* (*b*). In the first of these cases the defendant used the words of two or three songs of the plaintiff as the vehicle of some airs in an English version of Weber's opera of 'Oberon,' and the action was brought under the above Act. The rest of the version had been written by another person. There was no question as to appropriation of the music; and Lord Chief Justice Tindal left it to the jury to say whether there had been a representation of a part of the plaintiff's dramatic production. The jury found that there had been; and gave a verdict accordingly for the statutory penalty. Serjeant Wilde moved to set aside the verdict on the ground that as there had been no representation of a part of the plaintiff's piece,—the words of the songs adapted to the music being immaterial to the development of the drama,—the defendant was entitled to a judgment. But the court affirmed the verdict, holding that the question before it must in all cases be determined by a jury. "It is difficult," said the Chief Justice, "to say what is or is not a representation of a part of a dramatic production, . . . and it must be left to a jury to determine the fact."

The second case was an action against the defendant in respect of his having committed an infringement of the copyright of the plaintiffs in a drama founded on the novel by Eugène Sue called 'The Wandering Jew.' There had been a drama in French founded on the same novel, and the version claimed by the plaintiffs, prepared by Mr. Lewis and assigned by him to them, was an adaptation from the French. The defendant had since brought out another adaptation, which it was alleged was, in part, an imitation of the former, and had thereby committed an infringement of the plaintiffs' copyright. When the case came on for trial, it was agreed to discharge the jury, Lord Coleridge undertaking to read the plays, to receive such evidence as he might deem material, and to find whether there had been any copying so as to bring the case within the statute. He found there had been two "scenes or points" of the plaintiffs' drama taken by the defendant without recourse either to the French novel or to the drama constructed from it, and he directed the verdict to be entered for the defendant. The finding was as follows: "I find in this

(*a*) (1837), 4 Bing. N. C. 17.
(*b*) (1878), L. R. 10 C. P. 572; 2 C. P. D. 42; 3 App. Cas. 483.

case that two scenes or points of the drama of the defendant have been taken direct from the drama of which Mr. Lewis was the author and the plaintiffs the assignees, without recourse to either the French novel or the French drama, originals common to the dramas of both the plaintiffs and defendant. I find this, first, in respect of the final scene of the defendant's drama; and secondly, of the appearance of the Wandering Jew, and the stage business connected with that appearance, which are to be found in the second scene of the second act of the defendant's drama, and in the fourth scene of the first act of the plaintiffs' drama. I find that the drama of the defendant is not, except in these respects, a copy from or a colourable imitation of the drama of the plaintiffs. I direct the verdict to be entered for the defendant. I assess the damages at 40*s.* if upon argument, as provided by the terms agreed to at the trial, the court should be of opinion that the verdict ought to be entered for the plaintiffs." The case was argued upon a rule obtained to enter the verdict for the plaintiffs. This rule was discharged (*a*), and on appeal this decision was affirmed (*b*). The plaintiffs appealed to the House of Lords, and it was argued that the scenes, or points, as they were called, were material, valuable, and striking points, and affected considerably the attractiveness of the drama, and no one doubted that they had been copied from the plaintiffs' production, but the House affirmed the decisions of the courts below, Lord Hatherley saying: "There is indeed one obvious difference between the copyright in books and that in dramatic performances. Books are published with an expectation, if not a desire, that they will be criticised in reviews, and if deemed valuable, that part of them will be used as affording illustrations by way of quotation or the like, and if the quantity taken be neither substantial nor material, if, as it had been expressed by some Judges, 'a fair use' only be made of the publication, no wrong is done and no action can be brought. It is not, perhaps, exactly the same with dramatic performances. They are not intended to be repeated by others, or to be used in such a way as a book may be used, but still the principle *de minimis non curat lex* applies to a supposed wrong in taking a part of dramatic works, as well as in reproducing a part of a book. The minimum of damages, to be awarded when the fact of damage and the right to damages have been once established, was no doubt fixed because of the difficulty of proving with definiteness what amount of

(*a*) L. R. 10 C. P. 572. (*b*) 2 C. P. D. 42.

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actual damage had been sustained, by perhaps a single performance at a provincial theatre of a work belonging to a plaintiff, whilst at the same time his work might be seriously depreciated if he did not establish his right as against all those who infringed upon it. . . . I think, my lords, regard being had to the whole of the case, to the finding of the Lord Chief Justice that the parts which were so taken were neither substantial nor material parts, and the impossibility of damage being held to have accrued to the plaintiff from such taking, and the concurrence of the other Judges before whom the case was brought, that this appeal should be dismissed, and dismissed with costs" (*a*).

It is worthy of note here that when the question was raised in the Common Pleas, Lord Coleridge set out fully the reasons which had dictated his direction, and it then appeared that though the finding had no explicit allegation as to the character of the "scenes" or "points" which it finds to have been taken, their immateriality was meant to be conveyed. "These points so copied," said he, "were not parts of the dialogue or composition of the plaintiffs' drama, but were in the nature of dramatic situations or scenic effects. It appeared to me that, looking to the general character of the two dramas respectively, the extent to which the one was taken from the other was so slight, and the effect upon the total composition was so small, that there was no substantial and material taking of any one portion of the defendant's drama from any portion of the plaintiffs'. Therefore, though I felt bound to find that there was a taking of these two small points, I decided to enter the verdict for the defendant."

In another case the defendant had dramatized a story of the plaintiff and had extracted almost verbatim from the tale very considerable passages for introduction into his play. Thus Act I. consisted of 674 lines: 47 of these were stage directions; of the remaining 627, 125 were taken verbatim from the novel. Some of the passages extracted were prominent and striking parts of the dialogue contained in the novel. It was held that an infringement had been committed, and that all passages from the plaintiff's book must be cancelled (*b*).

What amounts to substantial identity.

As to what amounts to such substantial identity as to constitute piracy is well illustrated by an American case (*c*). The matter alleged to have been pirated was the "railroad scene"

(*a*) 3 App. Cas. 483, 492, 493.
(*b*) *Warne* v. *Seebohm* (1888), 39 Ch. D. 73.
(*c*) *Daly* v. *Palmer* (1868), 6 Blatch. (Amer.) 256; see *Boucicault* v. *Wood*, 2 Biss. (Amer.) 34; *Martinetti* v. *Maguire*, 1 Deady (Amer.) 216.

in Daly's play 'Under the Gaslight.' In this scene is represented a surface railroad and a signal station-shed, in which a woman, at her own request, is locked by the signalman, who then disappears. Next are seen two men, one of whom binds the other with a rope, fastens him to the railroad track, and leaves him to be killed by an expected train. From a window in the shed the woman sees what is done, hears the noise of the approaching train, breaks open the door with an axe, and frees the intended victim an instant before the train rushes by.

This scene was reproduced, but with variations, by Mr. Boucicault in his drama entitled 'After Dark.' In that play he makes one of the characters, from a wine vault where he had been thrown, see, through a door into an adjoining vault, two persons pass through a hole in the wall the body of a man who had been made unconscious by drugs. With an iron bar he enlarges an orifice in the wall of the vault, which opens on an underground railway, and sees lying insensible on the track the person whose body has just been put there by the two men in the adjoining vault. Hearing the noise of a coming locomotive, he quickly makes his way through the opening in the wall and moves the body from the track, just in time to prevent it from being run over by the passing train.

In Daly's drama this incident occupies the third scene of the fourth act, and during its progress, there is considerable conversation between the several characters on the stage. In Boucicault's drama, it is represented in three scenes of the third act, chiefly by action, but partly by monologue spoken by one of the characters after he has seen the body on the track. In laying down the law applicable to these facts, Mr. Justice Blatchford said :—

"The series of events so represented, and communicated by movement and gesture alone to the intelligence of the spectator, according to the directions contained in parentheses, in the two plays in question here, embraces the confinement of A. in a receptacle from which there seems to be no feasible means of egress: a railroad track, with the body of B. placed across it in such a manner as to involve the apparent certain destruction of his life by a passing train; the appearance of A. at an opening in the receptacle, from which A. can see the body of B., audible indications that the train is approaching, successful efforts by A. from within the receptacle, by means of an implement found within it, to obtain egress from it upon the track; and the moving of the body of B. by A., from the

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impending danger, a moment before the train rushes by. In both of the plays the idea is conveyed that B. is placed intentionally on the track, with the purpose of having him killed. Such idea is, in the plaintiff's play, conveyed by the joint medium of language uttered, and of movements which are the result of prescribed directions, while in Boucicault's play it is conveyed solely by language uttered. The action, the narrative, the dramatic effect and impression, and the series of events in the two scenes, are identical. Both are dramatic compositions, designed or suited for public representation. It is true that in one A. is a woman, and in the other A. is a man; that in one A. is confined in a surface railroad station-shed, and in the other A. is confined in a cellar abutting on the track; that in one A. uses an axe, and in the other A. uses an iron bar; that in one A. breaks down a door, and in the other A. enlarges a circular hole; that in one B. is conscious, and is fastened to the rails by a rope, and in the other B. is insensible, and is not fastened; and that in one there is a good deal of dialogue during the scene, and in the other only a soliloquy by A. and no dialogue. But the two scenes are identical in substance, as written dramatic compositions, in the particulars in which the plaintiff alleges that what he has invented, and set in order, in the scene, has been appropriated by Boucicault.

"All that is substantial and material in the plaintiff's railroad scene has been used by Boucicault, in the same order and sequence of events, and in a manner to convey the same sensations and impressions to those who see it represented, as in the plaintiff's play. Boucicault has, indeed, adapted the plaintiff's series of events to the story of his play, and, in doing so, has evinced skill and art; but the same use is made in both plays of the same series of events, to excite, by representation, the same emotions, in the same sequence. There is no new use, in the sense of the law, in Boucicault's play, of what is found in the plaintiff's railroad scene. The railroad scene in Boucicault's play contains everything which makes the railroad scene in the plaintiff's play attractive as a representation on the stage. As, in the case of a musical composition, the air is the invention of the author, and a piracy is committed if that in which the whole meritorious part of the invention consists is incorporated in another work, without any material alteration in sequence of bars; so in the case of the dramatic composition, designed or suited for representation, the series of events directed in writing by the author, in

any particular scene, is his invention, and a piracy is committed if that in which the whole merit of the scene consists is incorporated in another work, without any material alteration in the constituent parts of the series of events, or in the sequence of the events in the series.

"The adaptation of such series of events to different characters who use different language from the characters and language in the first play is like the adaptation of the musical air to a different instrument, or the addition to it of variations or of an accompaniment. The original subject of invention, that which required genius to construct it and set it in order, remains the same in the adaptation. A mere mechanic in dramatic composition can make such adaptation, and it is a piracy, if the appropriated series of events, when represented on the stage, although performed by new and different characters using different language, is recognised by the spectator, through any of the senses to which the representation is addressed, as conveying substantially the same impressions to, and exciting the same emotions in the mind, in the same sequence or order. Tested by these principles, the railroad scene in Boucicault's play is, undoubtedly, when acted, performed, or represented on a stage or public place, an invasion and infringement of the copyright of the plaintiff in the railroad scene in his play."

Common source.

Where the similarity between two pieces arises from the fact of their being taken from a source open to all there is no piracy. As Lord Eldon said: "All human events are equally open to all who wish to add to or improve the materials already collected by others." There can be no plagiarism in dramatizing the same incidents. In a case of *Seman* v. *Copeland*, where the action was for having caused to be represented the plaintiffs' play, or a portion thereof, proof that the plot had been taken from the same source, namely, that of a newspaper report of some stirring events which took place during the Indian Mutiny at Delhi, was a good defence. Here the narrative suggested the plot, and most of the characters, alike in the minds of both parties; but when a scene only from the play of another, mixed up with that which is not original, is infringed, the court will protect the author. Copyright, therefore, may be said to exist in the incidents of a play. Thus in *Boucicault* v. *Egan* an injunction was granted to restrain the representation of the water-cave scene in the plaintiff's drama of 'The Colleen Bawn.' The defendant had represented a play dramatized from Gerald Griffin's novel of 'The Collegians,' the parent of the plaintiff's

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play also; but the scene in question, of which the defendant's representation was a colourable imitation, was original, and the most important and effective in the plaintiff's piece, and not contained in the novel (*a*).

Infringement of the copyright in a musical composition.

As to what amounts to an infringement of the copyright in a musical composition (*b*), it has been decided that to publish, in the form of quadrilles and waltzes, the airs of an opera in which there exists an exclusive copyright, amounts to such. In *D'Almaine* v. *Boosey* (*c*), the plaintiff published, first the overture, and then a number of airs and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and, that, in one of his waltzes, he had introduced seventeen bars in succession containing the whole of the original air, although he added fifteen other bars which were not to be found in it. This, it was contended, was not a piracy: first, because the whole of each air had not been taken; and secondly, because what the plaintiff had purchased of the original author was the entire opera, and the opera consisted, not merely of certain airs and melodies, but of the whole score. Lord Lyndhurst, Chief Baron, however, held, as to the first argument, that piracy might be of part of an air as well as of the whole; and with reference to the second, that, admitting that the opera consisted of the whole score, yet if the plaintiff was entitled to the work, *à fortiori* he was entitled to publish the melodies which formed a part. The Lord Chief Baron regarded the subject of music on a different principle to that which he regarded other literary works; for he would not admit that the adapting for dancing, or otherwise, from the original composition, in which some degree of art is needed, could be deemed such a modification of an original work as should absorb the merit of the original in the new composition. It is the air or melody which is the invention of the author, and which may, in such case, be the subject of piracy; and a piracy is committed if, by taking, not a single bar, but several, that in which the whole meritorious part of the invention consists is incorporated in the new work.

"If," said Lord Lyndhurst, "you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them, in a different

(*a*) Cf. *Reichardt* v. *Sapte* (1893), 2 Q. B. 308; *Tree* v. *Bowkett* (1896), 74 L. T. 77.
(*b*) Assumption of the name and description of a song, see *Chappell* v. *Sheard* (1855), 2 K. & J. 117.
(*c*) (1835), 1 Y. & C. 288.

order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle."

Representation first in a foreign country precludes exclusive right of representation being obtained here.

The author of a dramatic work which has been first represented in a foreign country (such country not being a country within the International Copyright Acts) is not entitled to any exclusive right of representation in this country, the representation of a dramatic work being a publication of it within the meaning of the statute 7 Vict. c. 12, s. 19. This section provides that no author or composer of any dramatic piece or musical composition which shall, after the passing of the Act, be first published out of her Majesty's dominions, shall have any copyright therein, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under that Act.

The only question which seems to have arisen upon this section has been as to the meaning to be attached to the word "published." In 1863 the point came before Vice-Chancellor Wood with reference to the piece known as 'The Colleen Bawn.' Mr. Boucicault filed his bill against Mr. Delafield, the proprietor of a theatre in the provinces, to restrain his performing this play. It appeared that 'The Colleen Bawn' had been performed in New York, and the Vice-Chancellor decided that the public performance in New York was a publication, and that having published it in that way, Mr. Boucicault was, under the 19th section of the 7 Vict. c. 12, absolutely deprived of the exclusive right in this country (*a*). After referring to the 19th section the Vice-Chancellor says: "If Mr. Boucicault had first represented his piece in the country, he would have been entitled to the copyright given by the earlier statutes. So, also, if he had given his first representation in any country

(*a*) *Boucicault* v. *Delafield* (1863), 1 H. & M. 597.

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with which a convention had been made under the International Copyright Act, he would have been entitled under that Act to all the same privileges. But in no case is a person to enjoy any rights conferred by the old Acts concurrently with those created by the International Copyright Act. This is the effect of the 19th section. . . . The plain purpose of the statute is to secure for this country the benefit of the first publication of new works, and certain conditions are made without which works first published abroad are not to be entitled to copyright. These conditions have not been complied with. The plaintiff, therefore, fails in his demand, and the bill must be dismissed."

The point was again raised by the same plaintiff in a subsequent case (*a*).

Mr. Boucicault applied for an injunction to restrain Mr. Chatterton, who was the lessee of the Adelphi Theatre, from representing the drama called 'The Shaughraun,' the copyright in, and the sole right of representing or performing which, he claimed. 'The Shaughraun' was written by the plaintiff in 1874, and was first performed in New York in November of that year. It was registered at Stationers' Hall in 1874, as a book under the Copyright Act, 1842, but there being an inaccuracy in the form of the registration, the drama was again registered in November 1876, in the name of Mr. Boucicault as the proprietor of the copyright. In September 1875, the play was produced at Drury Lane under an arrangement between the plaintiff and defendant, and it was there performed till the month of December, after which it was transferred to the Adelphi, and played till January 1876. Mr. Boucicault then went to America, where he had been naturalized. After this a correspondence took place between the plaintiff and the defendant, in which the defendant expressed his desire to reproduce the drama at the Adelphi Theatre, but the plaintiff declined the defendant's proposals and refused to permit the performance. The defendant thereupon advertised the performance, and the plaintiff commenced an action. He claimed under the Act 3 & 4 Will. IV. c. 15, and contended that his rights under this Act were unaffected by the 7 Vict. c. 12. It was argued that the play had not been published abroad, as representation did not amount to publication; that the statute 7 Vict. c. 12, only took away the right conferred by the 3 & 4 Will. IV. c. 15, and preserved by the 5 & 6 Vict. c. 45, as far as regards plays *published abroad* by printing. Vice-Chancellor

(*a*) *Boucicault* v. *Chatterton* (1876), 5 Ch. Div. 267.

Malins considered himself bound by the decision in *Boucicault* v. *Delafield*, and held that the acting of the play in New York was a publication within the meaning of 7 Vict. c. 12, s. 19, and that by that publication Mr. Boucicault had lost his exclusive right of performance.

On appeal this view was confirmed, Lord Justice James saying: "The 19th section of the International Copyright Act has a limited purpose only, expressed in terms showing the meaning of the word 'published, which must express something that can be predicated of a book, of a dramatic piece, of a musical composition, of a print or article of sculpture, or any other work of art; that is to say, its being made public by those means which are appropriated to the particular thing. A book is published by being printed and issued to the public, a dramatic piece or a musical composition is published by being publicly performed, a piece of sculpture or other work of art by being multiplied by casts or other copies. That, as it appears to me, is the natural meaning of the word 'published' in that section, and that is the meaning attributed to it by the Vice-Chancellor." And Brett, J.A., saying: "A dramatic composition differs from many compositions in this, that it can be made use of in two different ways. It may be made use of by printing it, and distributing it as a written composition or a book. It may also be used by having it acted on the stage of a theatre. If the author be an Englishman, no doubt he has certain rights given to him by the statute 3 & 4 Will. IV. c. 15, but a foreign author has no rights at all under that statute. If, therefore, a foreign author's play was first acted abroad, he could not afterwards claim any protection in England. He would by acting it abroad have made it *publici juris* in England, and, therefore, anybody in England might act it here. It is said, that an English author, although he allows his compositions to be acted abroad, does not come under the same difficulty, because he is protected by the statute of 3 & 4 Will. IV. c. 15. That may be, and although I have some doubts whether the limitation of the meaning of the word 'published' which has been contended for applies even to that statute, I will assume that it does, and that an Englishman, although his piece was first acted abroad, could claim the protection given by the statute of 3 & 4 Will. IV. c. 15. A foreigner, however, certainly could not claim that protection. Then, if that be the state of things before the statute 7 Vict. c. 12, we have two sets of people to deal with as regards dramatic compositions, that is, foreign authors who had no protection in England, and English authors

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who might first of all have their pieces acted abroad, and yet have protection under 3 & 4 Will. IV. c. 15. The statute of Victoria begins by giving the Queen power to give protection to foreign authors and dramatic composers, and that is done under section 5, which has regard to their protection against performances. Their protection against publication by printing is given to them under other sections. The 5th section provides that where the authors of dramatic pieces have first publicly represented or performed them in any foreign country, the Queen shall have the power of giving them sole liberty of representing or performing the same in any part of her Majesty's dominions. The statute is dealing with several kinds of things to be protected, which may be published in different ways, and with different persons, with foreigners, and, as we shall presently see, with Englishmen. Then the 19th section provides in perfectly general words, 'That the author of no dramatic piece or musical composition which shall after the passing of this Act be first published out of her Majesty's dominions shall have any copyright therein respectively, or any exclusive right to the representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act.' Now, it is said that the word 'published' ought to be restricted to the meaning which is said to have been affixed to it in the statute 3 & 4 Will. IV. c. 15. If so, the word 'published,' when applied to English authors, must have one meaning, and another when applied to foreign authors under precisely similar circumstances. That seems to me to be contrary to the common canon of the construction of statutes, for it requires us to introduce into the statute the proviso that in the case of English authors representation out of her Majesty's dominions shall not be considered a publication. That would be to introduce words which we have no right to introduce, unless there be something in the nature of the case which makes it obvious that such must have been the object of the legislature. It is endeavoured to make out this to have been the object by saying that it is unjust to take away the right of an English author. I see nothing contrary to reason or justice in saying that if an English author choses to go abroad and there represent, or allow to be represented, his composition for the first time, he shall be in the same position as a foreigner who has done the same thing. If that be so, the word 'published' must have its natural construction, whether it is applied to the compositions of Englishmen or foreigners. That ordinary meaning is 'made public,' and a dramatic com-

position is made public the moment it is represented or acted. If Englishmen have their plays first represented abroad, they are by this statute placed on the same footing as foreigners; if they have them first represented in England they do not come under this statute at all; but their rights will be governed by 3 & 4 Will. IV. c. 15, and 5 & 6 Vict. c. 45."

Immoral play.

The Court will not protect any person in the exclusive right of representing an immoral play (*a*).

Licences.

The proprietor of a drama whether published or unpublished, may license one or more persons to perform it anywhere, without giving to any one the exclusive right of representation. But in such case only the owner of the copyright could maintain an action in respect of unlicensed performances. The owner may grant the exclusive right of representation for any named part of the country, or any town, city, or county, and within such limits, no one without the consent of the licensee has the right to perform the play; and if the infringement occurs in a place where such exclusive right has been granted, the author cannot sue in respect of such infringement, without making the licensee a co-plaintiff (*b*).

Assignment of the right of representation.

By the 22nd section of the 5 & 6 Vict. c. 45, it is enacted that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition, shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the registry book, to which reference has already been made (*c*), shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment. Under an assignment of "all present and future vested and contingent copyright in a musical composition," together with "all property" therein, the exclusive right of performance passes (*d*).

It is competent for an assignee of the sole right of representing a dramatic piece to sue for penalties under 3 & 4 Will. IV. c. 15, notwithstanding the assignment is not made by deed, or registered under 5 & 6 Vict. c. 45, s. 22 (*e*),

(*a*) The Lord Chamberlain on one occasion ('The Happy Land' at the Court Theatre) interposed to prevent certain high personages being represented in ludicrous positions upon the stage; see the powers of the Lord Chamberlain, 6 & 7 Vict. c. 68, Appendix.

(*b*) *Tree* v. *Bowkett* (1896), 74 L. T. 77; cf. *Holt* v. *Woods* (1896), 17 New South Wales Reports, where it was held that the assignee of the colonial right could sue in his own name.

(*c*) *Ante*, chapter on Registration.

(*d*) *Ex parte Hutchins* v. *Romer* (1878), 1 Q. B. D. 90, 483; 27 W. R. 261, 857; 48 L. J., Q. B. 29, 505.

(*e*) *Marsh* v. *Conquest* (1864), 17 C. B. 418; 10 L. T. 717; *Edwards* v. *Cotton* (1903), 19 T. L. R. 34.

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and so too it is competent for the author or his assign to sue for unauthorized performances if the performing rights have not been transferred (*a*).

The administrator of an author of a dramatic piece first acted in 1843, by deed dated the 14th of April, 1859, in consideration of £100, assigned to the plaintiff the copyright and right of representation in all dramatic pieces written by the author; no entry of the assignment to the plaintiff had been made in the registry book in pursuance of the section under consideration; but it was held that the plaintiff might maintain an action for penalties under statute 3 & 4 Will. IV. c. 15, against the defendant, for representing the piece without his licence within twenty-eight years of its publication, the period for which the sole liberty of representation is given by that statute, although the deed was not registered under statute 5 & 6 Vict. c. 45, s. 22 (*b*).

That section in terms applies only to the effect of an assignment of the copyright, limiting its operation as such, and was intended to correct what had probably been an omission in previous legislation; for upon the construction of statute 3 & 4 Will. IV. c. 15, s. 1, the Court of Queen's Bench in *Cumberland* v. *Planché* (*c*) had held that the assignment of the copyright of a dramatic piece, carried with it, incidentally, the exclusive right of representation. Section 22 of statute 5 & 6 Vict. c. 45, was intended to meet that decision by enacting that no assignment of the copyright of a dramatic piece or musical composition should be holden to convey the right of representing or performing it, unless an entry was made in the registry book that it was the intention of the parties that such right should pass by the assignment (*d*). That enactment does not apply to a case in which there is an express assignment of the *right of representing or performing*. In the case of *Lacy* v. *Rhys*, there was an assignment of the right of acting, as well as of the copyright; and it was held, that it did not follow that, because section 24 required registration of an assignment of the copyright, and there was such an assignment there, therefore the assignment of the *right to represent* was in any way affected: *Utile per inutile non vitiatur*. When a person professes to convey two things, one of which he has a right to convey and the other he has not, the instrument operates

(*a*) But as to the recovery of penalties see 45 & 46 Vict. c. 40; 51 & 52 Vict. c. 17.

(*b*) *Marsh* v. *Conquest*, *supra*; *Edwards* v. *Cotton*, *supra*.

(*c*) (1834), 1 Ad. & E. 580.

(*d*) *Chappell* v. *Boosey* (1882), 21 Ch. D. 240.

to pass the property in that which he has a right to convey, and the rest is surplusage (*a*).

Assignment of the right of representation need not be registered.

It is clear, therefore, that an assignment merely of the right of representation does not need to be registered under the 22nd section; but the consent must be in writing. The provision of this section applies only to cases where the copyright in a dramatic or musical composition is assigned without any mention of the right of representation, and where consequently it may be doubtful whether the latter right was intended to be passed (*b*). Any doubt as to whether the consent within the Act must be in writing is removed by the decision in *Eaton* v. *Lake* (*c*), that oral permission to perform is not sufficient to constitute a binding assignment or consent to representation of a composition.

The legal assignment must be in writing.

The legal assignment either of the right to represent a dramatic piece, or perform a musical composition must be in writing (*d*), but need not be attested (*e*) or sealed (*f*). This was decided in *Shepherd* v. *Conquest* (*g*), where it appeared that the plaintiffs, being proprietors of the Surrey Theatre, verbally agreed with one Courtney that the latter should go to Paris for the purpose of adapting a piece there in vogue for representation on the English stage; that the plaintiffs should pay all Courtney's expenses, and should have the sole right of representing the piece in London, Courtney retaining the right of representation in the provinces. Courtney accordingly proceeded to Paris, produced a piece called 'Old Joe and Young Joe,' and was paid by the plaintiffs as agreed. The piece was brought out at the Surrey Theatre by the plaintiffs, and afterwards at the Grecian Saloon by the defendant, who had obtained an assignment from Courtney. The representations by the defendant at the Grecian Saloon were the infringements of the plaintiffs' right complained of. The defendant objected that, as there was no assignment in writing from Courtney to the plaintiffs, the action was not maintainable. The plaintiffs contended that no assignment was necessary, for

(*a*) *Per* Cockburn, C.J., in *Lacy* v. *Rhys* (1865), 4 B. & S. 873, 883; 12 W. R. 309; 33 L. J. (Q.B.) 157; 10 Jur. (N.S.) 612. See *Marsh* v. *Conquest* (1864), 10 L. T. 717; 17 C. B. (N.S.) 418.

(*b*) See *Wood* v. *Boosey* (1868), 7 B. & S. 869.

(*c*) (1888), 20 Q. B. D. 378; *Edwards* v. *Cotton* (1903), 19 T. L. R. 34.

(*d*) See *ante*, p. 144, as to what is an assignment, see *Leader* v. *Purday* (1849), 7 C. B. 4; *Lacy* v. *Toole* (1857), 15 L. T. 512.

(*e*) *Cumberland* v. *Copeland* (1861), 1 Hurl. & C. 191.

(*f*) *Marsh* v. *Conquest* (1864), 17 C. B. 418; 10 L. T. 717.

(*g*) (1856), 17 C. B. 427; 25 L. J. (C.P.) 127; *Eaton* v. *Lake* (1888), 20 Q. B. D. 378; 57 L. J. (Q.B.) 227; 59 L. T. 100; 36 W. R. 277 (C.A.). When A. agrees with B. to "let B. have" a particular drama in discharge of £10 due from A. to B., this is a complete assignment of A.'s whole property in the drama; *Lacy* v. *Toole*, *supra*.

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that, by virtue of Courtney's employment by them, they were the proprietors of the piece in question from the first moment of its composition, or that at least they were entitled to the sole right of representation in London. The Court of Common Pleas was clear of opinion that though Courtney made the adaptation at the suggestion of the plaintiffs, he acquired for himself, as the author of the adaptation, and as far as that adaptation gave any new character to the work, the statutory right of representing it; and that, inasmuch as the plaintiffs had no assignment in writing of that right, they could not sue for an infringement of it.

In the course of the delivery of the judgment, Jervis, C.J., doubted whether, under any circumstances, the copyright in a literary work, or the right of representation of a dramatic one, could become invested *ab initio* in an employer other than the person who had actually composed or adapted the work. But he was clearly of opinion that no such effect could be produced when the employers merely suggested the subject, and had no share in the design or execution of the work, the whole of which, so far as any character of originality belonged to it, flowed from the mind of the person employed. It appeared to him to be an abuse of terms to say that, in such a case, the employers were the authors of a work to which their minds had not contributed an idea; and it was upon the author, in the first instance, that the right was conferred by the statute which created it. Literary property stood upon a different and higher ground from that occupied by mechanical invention. The intention of the legislature in the enactments relating to copyright was to elevate and protect literary men; such an intention could only be effectuated by holding that the actual composer of the work was the author and proprietor of the copyright, and that no relation existing between him and an employer, who himself took no intellectual part in the production of the work, could, without an assignment in writing, vest the proprietorship of it in the latter (*a*).

This case was followed in *Eaton* v. *Lake* (*b*). The plaintiff was employed by the defendant, the proprietor of a music-hall, as the conductor of the orchestra at a weekly salary, and had been in the habit of composing the music for ballets performed there, receiving payments of varying amounts from the defendant in respect of such compositions. The plaintiff composed the music for a Christmas ballet, to be performed at the

(*a*) *Ante* pp. 109 *et seq.*
(*b*) (1888), 20 Q. B. D. 378; 57 L. J. (Q.B.) 227; 59 L. T. 100; 36 W. R. 277 (C.A.); 4 T. L. R. 96, 230.

defendant's music-hall, but while the piece was running he threw up his engagement as conductor and took away the musical score and band parts necessary for the performance of the music. It was subsequently arranged orally between the plaintiff and the defendant that the plaintiff should give up the score and band parts to the defendant in consideration of a payment of £20. The defendant afterwards continued to perform the piece with the plaintiff's music, and the plaintiff brought an action to recover penalties in respect of such subsequent performances. The jury found that the music composed for the ballet by the plaintiff was a substantial, independent musical composition, and that the plaintiff had not sold his rights therein to the defendant. The Court of Appeal (reversing the judgment of the Divisional Court) held that in the absence of any assignment or consent to the representation of the composition in writing given by the plaintiff, the performances were contrary to the right of the author and the action was maintainable.

No assignment necessary where work executed for another.

These cases must be distinguished from those in which one person forms the original and general design of a piece, and another merely carries out that design, as in *Hatton* v. *Kean* already referred to (*a*), where the defendant verbally employed the plaintiff to compose music as part of the representation of one of Shakespeare's plays, adapted to the stage by the defendant, with the aid of scenery, dresses, music, and other accompaniments, the general design of which was formed by the defendant. There it was held that, as between the parties, the defendant had the sole liberty of performance without assignment or consent in writing from the plaintiff. Nor is there any conflict with the principle laid down by Sir John Leach in *Barfield* v. *Nicholson* (*b*): "That the person who forms the plans and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar acquirements, that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions, contribute to it, is the author and proprietor of the work, if not within the literal expression, at least within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally."

The enactments upon which literary property and patents for inventions are respectively founded differ widely in their

(*a*) (1859), 29 L. J. (C.P.) 20.
(*b*) (1824), 2 Sim. & Stu. 1; 25 R. R. 144.

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origin and in their details. In order to show that the position and rights of an author within the former Acts are not to be measured by those of an inventor within the latter, it is only necessary to bear in mind that, whilst on the one hand a person who imports from abroad the invention of another, previously unknown here, without further originality or merit in himself, is an inventor entitled to a patent; on the other hand, a person who merely reprints for the first time in this country a valuable foreign work, without bestowing on it any intellectual labour of his own, as by translation (which, to some extent, must impress a new character), cannot thereby acquire the title of an author within the statutes relating to copyright (*a*). In *Morris* v. *Kelly* (*b*) an injunction was granted to restrain the performance of a comedy, the copyright of which had been sold by the author and had been afterwards assigned by writing to the plaintiffs, although it did not appear whether the original assignment was in writing, that fact being presumed till the contrary was shown.

What constitutes joint authorship.

The making mere alterations, additions, or improvements, whether with or without the consent of the author, does not constitute a joint authorship. In the case of *Levy* v. *Rutley* (*c*), the plaintiff, Mr. L. Levy, proprietor of the Victoria Theatre, employed a Mr. Wilks to write for him a piece called 'The King's Wager; or, the Camp, the Cottage, and the Court,' and himself suggested the subject. Mr. Wilks having completed the play, the plaintiff and some members of his company introduced various alterations in the incidents and in the dialogue, to make it the more attractive, and one of them wrote an additional scene. Under these circumstances it was held that there was no joint authorship. It was admitted that it was not necessary that each should contribute the same amount of labour, yet to constitute joint authorship there must be a joint labouring in furtherance of a common design. "All that the plaintiff has done," said Mr. Justice Keating in giving judgment, "is this: Wilks having written a dramatic piece complete, the plaintiff thinks it might be made more attractive, and accordingly he, without any co-operation with Wilks, introduces a new scene, and makes various alterations and additions to the dialogue. Could the additions so made constitute him a joint author with Wilks of the whole piece? There may, no doubt, be a plurality of authors: the statute,

(*a*) Jervis, C.J., in *Shepherd* v. *Conquest* (1856), 25 L. J. Ch. 127.
(*b*) (1820), 1 Jac. & W. 481 : 21 R. R. 216.
(*c*) (1871), Law Rep. 6 C. P. 523 : *Shelley* v. *Ross*, L. R. 6 C. P. 531, note (1).

in s. 1, dealing with the duration of copyright, speaks of 'the author or authors, or the survivor of the authors.' But I fail to discover any evidence that there was any co-operation of the two in the design of this piece, or in its execution, or in any improvements either in the plot or the general structure. All the plaintiff claims to have done is to vary some of the dialogue, so as to make it more suitable for his company or for his audience. If the plaintiff and the author had agreed together to re-arrange the plot, and so to produce a more attractive piece out of the original materials, possibly that might have made them joint authors of the whole. So, if two persons undertake jointly to write a play, agreeing in the general outline and design, and sharing the labour of working it out, each would be contributing to the whole production, and they might be said to be joint authors of it. But to constitute joint authorship, there must be a joint common design. Nothing of the sort appears here. The plaintiff made mere additions to a complete piece, which did not in themselves amount to a dramatic piece, but were intended only to make the play more attractive to the audience."

The composer's interest is not affected by showing that the song was composed to be sung by a particular performer at the Opera, and that by the regulations of that establishment such compositions become the property of the house (*a*).

A novel may be dramatised without infringement.

Though no person may, without the author's written consent, represent the incidents of his published dramatic piece, however indirectly taken, yet no action will lie, at the suit of the author of a novel, against a person who dramatizes it and causes it to be acted on the stage (*b*).

This was decided in *Reade* v. *Conquest* (*c*). The second count of the declaration alleged that the plaintiff was the duly registered proprietor of the copyright in a certain registered book, namely, a tale or novel or story entitled 'It is Never too Late to Mend,' and complained that the defendant, without the plaintiff's consent, dramatized the said novel, and caused it to be publicly represented and performed as a drama at the Grecian Theatre for profit, and thereby the sale of the book was injured, &c. To this count there was a demurrer; and it was insisted, on the part of the defendant, that representing the incidents of a published novel in a dramatic form upon the stage, although done publicly and for profit, is not an

(*a*) (1788), *Storace* v. *Longman*, 2 Camp. 27.
(*b*) *Reade* v. *Conquest* (1861), 9 C. B. 755; S. C. 30 L. J. (C. P.) 209; 9 W. R. 434; 7 Jur. (N.S.) 265.
(*c*) *Ibid.*

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infringement of the plaintiff's copyright therein; and the Court of Common Pleas was of opinion that the defendant was right (*a*).

Neither the 3 & 4 Will. IV. c. 15, nor the 5 & 6 Vict. c. 45, contemplated the conversion of a book into a dramatic piece, and the definition of copyright in the second section of the latter Act, "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied," evidently did not include the claim of the plaintiff in the above case.

But the drama may not be printed.

All that was here decided was, that the defendant had a right to act, that is to say, to speak and *represent the drama* which was constructed out of the plaintiff's novel; it was not held that the defendant had a right to *print it*.

In a subsequent case, in 1862 (*b*), Lush, as counsel for the defendant, submitted that he had a right to print and publish such a drama, with the exception of any passages which were mere copies of the novel; but the circumstances of the case did not render it necessary that the point should be decided. "If that question should arise," said Erle, C.J., "it would then be time to decide whether the defendant could find any defence; but it is clear he could not in that case defend himself on the ground that he was the author of the parts which he copied."

The question, however, arose in the case of *Tinsley* v. *Lacy* (*c*). A bill was filed by the publishers and owners of the copyright in two novels, called 'Aurora Floyd' and 'Lady Audley's Secret,' written by Miss Braddon. The novels had been dramatized by a Mr. Suter, and performed at the Queen's Theatre. The defendant, Mr. Lacy, had *published* the two plays as they were performed. It was proved that a large portion of the dramas, including the most striking incidents and much of the actual language of the novels, had been taken bodily from the novels. Vice-Chancellor Wood, in passing judgment, admitted that the defendant was entitled to dramatize the novels for the purpose of a mere acting drama; but held that he was not so entitled for the purpose of printing or selling his compilation. "He

(*a*) In a French case cited in Le Blanc on 'Piracy,' p. 233, under the name of *Lefranc* v. *Paul de Brusset*, a different principle was followed. The defendant there had dramatized a tale written by the plaintiff, and represented it upon the stage for profit; the plaintiff claimed to be entitled, as *collaborateur*, to a portion of the profits, and the court decided that, although he could not claim it in that capacity, inasmuch as the adaptation of the tale to the stage was without his knowledge or consent, still he had a good claim for damages against the defendant for the piracy, and it mulcted the defendant in damages and costs.

(*b*) (1862), *Reade* v. *Conquest*, 31 L. J. (C.P.) 153; 8 Jur. (N.S.) 764; 11 C. B. (N.S.) 479.

(*c*) (1863), 32 L. J. (Ch.) 535; 11 W. R. 876; 1 Hem. & Mill. 747.

has taken," said the Vice-Chancellor, "to use the language of Lord Cottenham in *Bramwell* v. *Halcomb* (*a*), the vital portion of the novels, the leading incidents of the plot, and in many instances the very language of the novel itself. He reprints in his books (and I confine myself to what appears in the books, and say nothing as to the represented drama), the very words of the most stirring passages of the novels. It is no answer to say that similar infringements have often been committed. Although Sir Walter Scott and other authors did not choose to assert any claim of this kind, this does not affect the rights of the plaintiff; and it is to be observed, moreover, that there has been a considerable alteration of the law since the time referred to by the extension of copyright to dramatic performances. . . . The question of the extent of appropriation which is necessary to establish an infringement of copyright, is often one of extreme difficulty; but, in cases of this description, the quality of the piracy is more important than the proportion which the borrowed passages may bear to the whole work. Here it is enough to say, that the defendant admits that one-fourth of the dramas is composed of matter taken from the novels. In *Campbell* v. *Scott* (*b*), which has a strong bearing on this point, the defendants had published a work containing biographies and selections from the works of a large number of modern poets, and, among others, six short poems, and extracts from larger poems written by the plaintiff. The defence was, that the poems were *bonâ fide* selections, forming a very small proportion of the writings of the plaintiff; that such compilations were cautiously made by the most respectable publishers; that the price of the compilation was £1 1*s.*, while the plaintiff's entire works were published at 2*s.* 6*d.*; and that the plaintiff would be rather benefited than injured by the defendants' work, which contained 10,000 lines, of which only a few hundreds were taken from the plaintiff's poems." The Vice-Chancellor, after observing that in the case of the 'Encyclopædia Londinensis' the jury found for the plaintiff, though the matter taken formed but a very small proportion of the work into which it was introduced, adds, "that it is not necessary to consider whether the selections were the cream and essence of all that Mr. Campbell ever wrote. There is no doubt that in this case, as in that of Campbell's poems, the passages taken were the striking passages, and these have been taken by the author of the defendant's publications for the

(*a*) (1836), 3 My. & Cr. 738.
(*b*) (1842), 11 Sim. 31; 11 L. J. (N.S.) Ch. 166; 6 Jur. 186.

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express purpose of using Miss Braddon's property for his own benefit. So long as he confined himself to dramatic representations he could not be interfered with; but when he printed his plays he brought himself within the letter of the law."

Neither may the drama be otherwise multiplied.

This was followed in the case of 'Little Lord Fauntleroy.' There the defendant dramatized the novel of this name and caused his play to be performed on the stage. The infringement of copyright complained of was that for the purpose of producing the play the defendant made four copies of it, one for the Lord Chamberlain and three for the use of the performers, either in MS. or by the aid of a typo-writer. Very considerable passages in the play were extracted almost verbatim from the novel. Thus in the first act there were 674 lines, of which forty-seven consisted of stage directions. Deducting them, there were 627, of which 125 (or about one-fourth) were taken from the novel. Some of the passages so extracted were prominent and striking parts of the dialogue contained in the novel. The defendant claimed the right to make more copies, if it should be necessary, to enable him to give further representations of the play in London and elsewhere, but the court denied this right, and held that what had been done by the defendant constituted an infringement of the plaintiffs' copyright, and that they were entitled to an injunction to restrain the defendant from printing or otherwise multiplying copies of his play containing any passages from the plaintiffs' book; also that all passages from the plaintiffs' book in the four copies must be cancelled (*a*).

In this case the defendant had not "printed," nor had he "exposed for hire" within section 15 of the Act of 1842, but the author is given, by section 2 of that Act, the exclusive liberty of "printing or *otherwise multiplying copies*" of his work, and the plaintiffs were held entitled to an injunction restraining an infringement of this exclusive liberty, though the defendant had not infringed any performing rights, and it was admitted that he had the right to dramatize the tale, if he could succeed in performing it without "multiplying copies" of the plaintiffs' book.

Author may protect his novel by dramatizing before publication.

The author of a play who makes use of its plot and dialogue in the composition of a novel, does not thereby forfeit his right to restrain infringement of his copyright in the play, although such infringement takes place through the medium of the novel, by a person who was ignorant of the existence of

(*a*) (1888), *Warne & Co.* v. *Seebohm*, 39 C. D. 73; 57 L. J. (Ch.) 689; 58 L. T. 928; 36 W. R. 686; cf. *Tree* v. *Bowkett* (1896), 74 L. T. 77.

the original play. The indirect appropriation, then, of any portion of the novel taken from the play, is an infringement of the copyright in the play. The plaintiff in *Reade* v. *Lacy* (*a*), wrote a play called 'Gold,' which he afterwards adapted as a novel, embodied a portion of the dialogue, and called it, 'Never too Late to Mend.' The novel was dramatized by another person, and, in doing so, portions of the original play were copied word for word, and in that form published by the defendant. It was held that ignorance would not justify the infringement of a right in one case more than in another, and that the publication of the play was an infringement of the copyright in 'Gold,' although the existence of that play was not known to the author, who took his materials from the novel (*b*).

So in a recent case where an action was brought by the executors of an author to restrain the defendant from representing a certain drama in infringement of the author's stage copyright, and it appeared that the author had first published a drama and afterwards a novel founded upon it, and the defendant's drama was dramatized directly from the novel and without the aid of the author's drama, still it was held that the author having published the drama before the novel, no person had a right to infringe the stage copyright in the drama, even though the passages complained of were taken from the novel and not from the drama of the author (*c*).

Author cannot protect his novel by dramatizing it after publication.

But, according to the authority of *Toole* v. *Young* (*d*), an author cannot protect his novel from dramatization by dramatizing it after its publication, it must be effected before publication of the novel. In the case referred to John Hollingshead had published in 1863, in the magazine called 'Good Words,' a story entitled 'Not Above his Business,' which he had written in dramatic form, that it might, with slight alterations, be performed on the stage. Soon after, the author adapted the piece for representation and called the play 'Shop,' which was substantially the same as the published story. In 1865, the play was bought from the author by the comedian Toole; and, when the action was brought, it had not been published or acted. In 1870, Grattan dramatized the story, which had

(*a*) (1861), 1 J. & H. 524.

(*b*) So in *Lee* v. *Simpson* (1847), 3 C. B. 871; 4 D. & L. 666, where the defendant had purchased the piece which he represented and believed he had a right to, but on proof by the plaintiff that he, the plaintiff, had the right, the judgment was against the defendant. If the plaintiff had been bound to show the defendant's knowledge, the protection conceded by the statute would be illusory.

(*c*) *Schlesinger* v. *Bedford* (1890), 63 L. T. 764; W. N. (1890), 224.

(*d*) (1874), L. R. 9 Q. B. 523; *Schlesinger* v. *Bedford*, *supra*.

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appeared in 'Good Words,' and afterwards sold the play to the defendant, by whom it was repeatedly performed on the stage under the name of 'Glory.' It was admitted that the plays were substantially the same, and that the defendant's had been obtained from the story, and not from the plaintiff's 'Shop.' The judgment of the court was that no rights, either in the work dramatized or in the plaintiff's play had been invaded by the defendant's dramatization; but, that by first publishing his composition as a book, an author forfeits the exclusive right to dramatize and to represent it on the stage; and though he should afterwards dramatize his own published composition, he cannot thereby bar others from exercising the same privilege.

It seems doubtful how far the distinction drawn by the court between the publication of the novelist's drama preceding the novel and succeeding the same is sound, but the distinction was admitted in the case of *Schlesinger* v. *Bedford* (*a*).

The only way, therefore, according to the authorities, in which it appears possible for an author to prevent other persons from reciting or representing as a dramatic performance the whole or any portion of a work of his composition, is himself to publish his work in the form of a drama, before publishing the novel and thus bring himself within the scope of the dramatic copyright clauses (*b*).

(*a*) (1890), 63 L. T. 762; W.N. (1890), 224.

(*b*) As to the dramatization of novels, the Royal Commissioners on Copyright in their report in 1878 said: "With reference to the drama, our attention has been directed to the practice, now very common, of taking a novel and turning its contents into a play for stage purposes, without the consent of the author or owner of the copyright. The same thing may be done with works of other kinds if adapted for the purpose, but inasmuch as novels are more suitable for this practice than other works, the practice has acquired the designation of dramatization of novels. The extent to which novels may be used for this purpose varies. Stories have been written in a form adapted to stage representation almost without change. Sometimes certain parts and passages of novels are put bodily into the play, while the bulk of the play is original matter; and at other times the plot of the novel is taken as the basis of a play, the dialogue being altogether original.

"Whatever may be the precise form of the dramatization, the practice has given rise to much complaint, and considerable loss, both in money and reputation, is alleged to have been inflicted upon novelists. The author's pecuniary injury consists in his failing to obtain the profit he might receive if dramatization could not take place without his consent. He may be injured in reputation if an erroneous impression is given of his book.

"In addition to these complaints, it has been pressed upon us that it is only just that an author should be entitled to the full amount of profit which he can derive from his own creation; that the product of a man's brain ought to be his own for all purposes; and that it is unjust, when he has expended his invention and labour in the composition of a story, that another man should be able to reap part of the harvest.

"On the other hand, it has been argued that the principle of copyright does not prevent the free use of the ideas contained in the original work, though it protects the special form in which those ideas are embodied; that a change in the existing law would lead to endless litigation; and that it would work to the disadvantage both of the author and the public. Upon these grounds, or some of them, a

Remedy in cases of infringement.

The 3 & 4 Will. IV. c. 15, secures no other right and prohibits no other act than that of representation. The right secured by this statute is re-affirmed, its duration enlarged, and its application extended to musical compositions by the 20th section of the Act of 1842; but the remedies prescribed by the latter statute for the unlawful publication of a book do not apply, and are not extended to the unlicensed representation of a play. For the latter wrong, the penalties given by the statute of William are re-enacted by the 21st section of the 5 & 6 Vict. c. 45. This section gives to the proprietors of the right of dramatic or musical representation or performance, during the term of their interest, all the remedies provided by the 3 & 4 Will. IV. c. 15. By the second section of this latter Act it is enacted, that if any person, during the continuance of the exclusive right of representing a dramatic piece, cause to be represented, without the author's or the proprietor's previous written consent, such production at any place of dramatic entertainment within the British dominions, every such offender shall, for each representation, be liable to the payment of not less than 40s., or of the full amount of the advantage arising from the representation, or of the loss sustained by the plaintiff, whichever shall be the greater damages.

Costs.

The section originally provided that a successful plaintiff should receive double costs of his suit, but double costs have been abolished in all cases by the 5 & 6 Vict. c. 97, s. 2, and a plaintiff is now only entitled to his taxed costs; but his costs are still part of his statutory remedy, so that if he brings his action in the High Court and recovers less than £10 he will not be deprived of his costs by reason of section 116 of the County Courts Act, 1888, which enacts that a plaintiff bringing his action in the High Court, when he might have brought it in the County Court, and recovering less than £10

bill introduced by Lord Lyttleton in 1866 and supported by Lord Stanhope was defeated.

"We have fully considered all these points, and have come to the conclusion that the right of dramatizing a novel or other work should be reserved to the author. This change would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected.

"Were this recommendation adopted, a further question would arise as to the time during which this right should be vested in the author, and, in the event of his not choosing to dramatize his novel, whether other persons should be debarred from making use of the story he has given to the world. We are disposed to think that the right of dramatization should be co-extensive with the copyright. It has been suggested in the interest of the public, that a term, say of three or five years, or even more, should be allowed to the author, within which he should have the sole right to dramatize his novel, and that it should be then open to any one to dramatize it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatizing uniform in its incidents with other copyright." Par. 76–81.

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in an action of tort, shall not be entitled to any costs of action unless the judge certifies that there was sufficient reason for bringing his action in the High Court (*a*).

The action may be brought in any Court having jurisdiction in such cases in that part of the British dominions where the offence is committed (*b*).

Interrogatories.

The 40*s.*, though styled a penalty in the margin of the Act, is not one strictly speaking. It was held in *Adams* v. *Batley* and *Cole* v. *Francis* (*c*) that the section does not impose a penalty upon the offender so as to preclude the plaintiff in an action to recover the specified amount, from administering interrogatories to the defendant. "The word 'offender,'" said Mr. Justice Day, "is only used as a convenient expression, and is in no way meant to designate a criminal. I am of opinion that this sum of 40*s.* is not a penalty." The decision was affirmed on appeal, when Lord Esher, M.R., said, "I see no characteristic of a penalty in this payment. I am of opinion that this case is not brought within any rule of law which prevents interrogatories from being administered to the defendant."

Where material part taken actual damage need not be proved.

When the part taken is material, the plaintiff is not bound to prove actual damage (*d*). "The positive enactment," said Tindal, C.J., in the last cited case, "that every offender shall be liable to an amount not less than 40*s.*, *or* to the full amount of the benefit derived or loss sustained, shows that damage to the plaintiff is not the test of the defendant's liability, but that 40*s.* is be paid, even if there be no actual damage." In a later case (*e*), however, Lord Hatherley seems to have thought it necessary to prove damage in order to subject the defendant to the statutory penalty. "The minimum of damages," said he, "to be awarded when the fact of damage and the right to damages have been once established, was no doubt fixed because of the difficulty of proving with definiteness what amount of actual damage had been sustained, by perhaps a single performance at a provincial theatre of a work belonging to a plaintiff, whilst at the same time his work might be seriously depreciated if he did not establish his right as against all those who infringed upon it."

(*a*) See *Beere* v. *Gibson*, 7 T. L. R. 285; [1891] 1 Q. B. 652.

(*b*) See *Beere* v. *Ellis* (1889), 5 T. L. R. 330.

(*c*) (1887), 18 Q. B. D. 625, and compare the case of *Saunders* v. *Wiel* [1892], 2 Q. B. 18 (a design case), an action brought for penalties under sec. 58 of the Patents, &c., Act, 1883, in which *Adams* v. *Batley* was approved and distinguished.

(*d*) *Planché* v. *Braham* (1837), 4 Bing. N. C. 19; and see *Chatterton* v. *Cave* (1878), 3 App. Cas. 498.

(*e*) *Chatterton* v. *Cave*, *supra*.

The Copyright Commissioners' suggestions.

The Royal Commissioners in their report in 1878 on Copyright say (*a*): "This provision for the 40*s.* penalty has lately been much abused. Copyright in favourite songs from operas and in other works has been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of £2 for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them, not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights, and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings, in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country. . . . The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title-page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s.* at present recoverable for any infringement of musical copyright by representation, the court should have power to award compensation according to the damage sustained."

It did not seem to them that the abuse above referred to had arisen in the case of dramatic copyright, nor did it seem to them likely to arise so long as the present law of licensing places of dramatic performance exists, and therefore they did not suggest any alteration in the law so far as it applies to that copyright.

The Copyright (Musical Compositions) Act, 1882.

The alteration suggested by the copyright commissioners has since been carried into effect by the 45 & 46 Vict. c. 40, the Copyright (Musical Compositions) Act, 1882, the 4th section of which gave a discretion to the court, as to costs where the plaintiff did not recover more than forty shillings as penalty or

(*a*) Pars. 169, 171, 172.

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damages. This Act had the effect of giving a check to the vexatious proceedings referred to by the Commissioners, and a final stop was put to them by the 51 & 52 Vict. c. 17, which repeals the 4th section of the Copyright (Musical Compositions) Act, 1882, and provides that notwithstanding the provisions of the Dramatic Copyright Act (*a*) or any other Act in which those provisions are incorporated, the penalty or damages to be awarded in respect of each and every unauthorized representation or performance of any musical composition, whether published before or after the passing of the Act, shall be such a sum as shall in the discretion of the court or judge, before whom such action or proceedings shall be tried, be reasonable, and the court or judge may award a less sum than 40*s.*, in respect of each and every such unauthorized representation or performance, or a nominal penalty or nominal damages as the justice of the case may require (*b*). By the 2nd section, the costs of all such actions or proceedings as aforesaid, are to be in the absolute discretion of the judge before whom such actions or proceedings may be tried.

It must be remembered, however, that musical compositions only are provided for, and that there is no discretion in the court as to the damages and costs (*c*) for the unauthorized performance of dramatic compositions which are still governed by the Act of William IV.

Actions to be brought within twelve months.

The 3rd section of the 3 & 4 Will. IV. c. 15, provides that all proceedings for any offence or injury under that Act shall be brought within twelve months from committing of the offence, or else the same shall be void and of no effect. This limitation seems to apply only to proceedings for penalties under the Act and not to actions for damages or in equity.

Not necessary to show defendant knowingly invaded plaintiff's right.

It is sufficient in an action upon this statute to describe the offence in the words of the Act; and it is not necessary, in order to constitute the offence, to show that the defendant knowingly invaded the plaintiff's right (*d*). The object of the legislature was to protect authors against the piratical invasion of their rights, and in construing the law the Judges have given it the fullest interpretation. Therefore in an action of debt to recover penalties under the 3 & 4 Will. IV. c. 15, s. 2, for representing a pantomime, of which the plaintiff was the

(*a*) 3 & 4 Will. IV. c. 15. (*b*) S. 1.

(*c*) *Roberts* v. *Bignell, Asher and Robertson* (1887), 3 T. L. R. 552, where the case is reported as an action for penalties under "5 & 6 Vict. c. 45, s. 11," which must be a mistake for 3 & 4 Will. IV. c. 15, s. 2.

(*d*) *Lee* v. *Simpson* (1847), 4 D. & L. 666; 3 C. B. 871; *Reade* v. *Lacy* (1861), 1 J. & H. 524.

author, without his licence, at a place of dramatic entertainment, upon *nil debet* by statute pleaded, it was held that the plaintiff's undertaking to give material evidence in Middlesex was fulfilled by proof of an offer to sell the pantomime in Middlesex by the plaintiff's agent, acting under his direction (*a*).

Where the plaintiff, as the author of a dramatic work, assigned the "London right" of it to A., the judge at the trial having found that "London right" meant the whole right of representation in London, and that the assignment was to A. and his assigns, it was held that the plaintiff could not bring an action for penalties under the 3 & 4 Will. IV. c. 15, in respect of representations in London, except as trustee for A. and his assigns (*b*).

Musical (Summary Proceedings) Act, 1902.

The proprietors of the copyright in musical compositions have suffered considerable injury at the hands of street hawkers, who have been in the habit of selling pirated copies of songs and music in the streets for a few pence. These pirated copies, in direct contravention of the 39 Geo. III. c. 79, s. 29, have not had the name of the printer printed on them, and the proprietors of the copyright have had a difficulty in finding a substantial person to proceed against. With a view to putting a stop to this practice the Musical (Summary Proceedings) Act, 1902, was passed, which came into force on the 1st October, 1902.

Section 1 of this Act provides that a court of summary jurisdiction, upon the application of the owner of the copyright in any musical work may, if satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, by order authorise a constable to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Section 2 authorizes a constable to seize without warrant pirated copies of musical works when they are being hawked, carried about, sold, or offered for sale, on the request in writing of the apparent owner of the copyright or of his agent thereto authorized in writing, and at the risk of such owner. On seizure of such copies they are to be conveyed by the constable

(*a*) *Lee* v. *Simpson* (1847), 4 D. & L. 666; 3 C. B. 871.
(*b*) *Taylor* v. *Neville* (1877), 47 L. J. Q. B. 254; 26 W. R. 299; 38 L. T. 50; *Tree* v. *Bowkett* (1896), 74 L. T. 77.

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before a court of summary jurisdiction, and on proof that they are infringements of copyright, they are to be forfeited or destroyed or otherwise dealt with as the court may think fit.

"Musical copyright" is defined by the Act to mean the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or authorise another person to do all or any of the following things in respect of a musical work: (1) to make copies by writing or otherwise of such musical work; (2) to abridge such musical work; (3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system. "Musical work" is defined as any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced, and a work is said to be pirated when it is reproduced without the consent lawfully given by the owner of the copyright.

Failure of Act.

This Act has not had the effect of putting a stop to the practices above referred to. Section 2 is obviously the most convenient section to proceed under, but it has been held that before an order can be made for forfeiture or destruction of pirated copies seized under this section, the person from whom they have been seized must be served with a summons notifying the intention to apply for such order (*a*). As there is no power to compel the person in whose possession the copies are found to give his name and address, or to ascertain, if he gives them, that they are correct, this decision has rendered the Act practically nugatory. Another defect in the Act that has been discovered is that the magistrates have no power to issue a search warrant for shops and premises where pirated copies are printed or stored and thus enable the proprietor of the copyright to get at the real offender, though under section 1 a magistrate is bound to issue his warrant to seize copies of all alleged pirated music, even if it appear that the music is being sold at a private house (*b*). The practice of the magistrates as to the proof of copyright required from the proprietor has varied in different courts.

At the time of writing, a Bill to amend the Act of 1902 has passed its second reading in the House of Commons, and been

(*a*) *Ex parte* Francis (No. 1) (1903), 1 K. B. 275; 72 L. J. K. B. 120; 88 L. T. 176; 51 W. R. 267.

(*b*) *Ex parte* Francis (No. 2) (1903), 88 L. T. 806; 51 W. R. 698; 67 J. P. 301.

referred to a committee to consider its clauses. The Bill proposes to constitute it an offence to print, publish, sell, or have in possession pirated music, and prescribes penalties for such offences. It also proposes to give power to magistrates to issue search warrants and to proceed without summons twenty-eight days after seizure of pirated copies, unless in the meantime a claim to them is received. The prospects of this Bill becoming law do not, however, seem very bright.

PART III.

ARTISTIC COPYRIGHT.

CHAPTER I.

COPYRIGHT IN ENGRAVINGS, PRINTS, AND LITHOGRAPHS.

Nature and origin of the right.

STRANGE, yet true it is, that an art of so much importance—one which has exercised such an influence on the refinement of the people, and tended so apparently, yet indirectly, to the formation of the polished character of civilized Europe—should have remained for years without any protection whatever from the legislature.

In England, protection was not afforded to the artist until that great engraver and designer, Hogarth, arose like a giant from the most elevated of his associates in the art, and with the aid of his keen and penetrating intellect discovered, that, toil and labour how much soever he might, the product of his intellectual genius was by no means regarded as solely his, nor he deemed to have acquired a more permanent property in it, than the purchaser or imitator of one his numerous works of art,

Engravings resemble literary works as regards the incorporeal right in them accruing to the author by the exertion of his mental powers in their production; but differ, as they also require a considerable amount of his manual skill and labour; they are, therefore, his property upon the same general principles as any other manufacture.

In handling the present state of the law on this branch of the fine arts we may properly investigate, under one view, the various Acts of Parliament which are particularly appurtenant to the collective arts of designing, engraving, and etching, inasmuch as they, unlike those respecting literary copyright, have not yet been consolidated.

Engravings are works having a commercial value, and as

such have a double claim upon the protection of the legislature. On the one hand, the artist claims that the productions of his genius may be protected, and injury to his fame and reputation, by the circulation of inferior imitations, prevented or guarded against; and on the other hand, security in the possession of the money value of the creation of his own mind.

Fine arts encouraged by the Stuarts.

During the reign of the Stuarts the fine arts received more or less patronage, and engraving and other productive arts began to flourish accordingly. George I. knighted the engraver of the cartoons. Line engraving, however, had been most cultivated, and the amount of skill required to imitate a plate must have nearly equalled that of its first production; every stroke of the graver would have to be repeated, so that the pirate could hardly undersell the original; and from the costliness of this style and its refinement few could afford to purchase, and perhaps, fewer could appreciate. As so much talent had to be spent by the engraver in transferring the forms to a new medium, from the canvas to the copper-plate, the value of the right of engraving to the owner of the picture was small; and the picture itself, whether a portrait or work of imagination, was executed solely as an individual work of art. Gradually, however, it became the practice to publish small prints, not for the profit on them, but to assist in spreading the reputation of the painter, and this was done in the case of portraits of public men. Of course the name of the artist was not omitted; it was attached to the corner, to secure, not, as now, the property in the print, but the fame of the picture. The diffusion of some new mechanic or chemic arts of engraving or etching facilitated this (*a*).

The first Copyright Engraving Act.

Unpublished engravings are protected at common law (*b*), but the first Act recognising engraving as an art, and extending towards its professors the protection they so unquestionably deserved, was that of the 8 Geo. II. c. 13, entitled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the time therein mentioned" (*c*). After reciting that "divers persons had, by their genius, industry, pains, and expense, invented and engraved, or worked, in mezzotinto or chiaro-oscuro, sets of

(*a*) Turner on 'Copyright in Designs,' p. 13.

(*b*) *Prince Albert* v. *Strange* (1849), 1 Hall & Tw. 1; 1 M. & G. 25; 18 L. J. Ch. 120.

(*c*) This Act by the Short Titles Act, 1892, may be cited as "The Engraving Copyright Act, 1734."

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historical and other prints, in hopes to have reaped the sole benefit of their labours, and that printsellers and other persons had of late, without the consent of the inventors, designers, or proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base (*a*) copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof," it enacted, that from and after the 24th of June, 1735, every person who should invent and design, engrave, etch, or work in mezzotinto or chiaro-oscuro any historical or other print or prints, should have the sole right and liberty of printing and representing the same for the term of fourteen years, to commence from the day of the first publishing thereof, which should be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints. And the Act provided penalties for piracy, but enacted that it should be lawful for any person who should thereafter purchase any plate for printing from the original proprietor, to print and reprint from the said plates without incurring any penalty.

Under this Act Lord Hardwicke refused relief to a person complaining of the piracy of a drawing or design which he had only procured to be made; "for,' said he, "the case was not within the statute, which was made for the encouragement of genius and art; if it was, any person who employs a printer or engraver would be so too. The statute is, in this respect, like the statute of new inventions, from which it is taken" (*b*).

In *Blackwell* v. *Harper* (*c*) it was held that this Act was not confined to works of invention only, but included the designing or engraving anything already in nature, and that a print published of any building, house, or garden fell within its scope.

No provision, it will be seen, is in this Act made for the protection of any work of which the engraver is not also the designer; and this has been accounted for by the fact that Hogarth, by whose influence the Act was introduced, was invariably the designer as well as the engraver of his celebrated works.

The second Act.

The 7 Geo. III. c. 38, was made to remedy this oversight, and extend protection to any person making an engraving from the original work of another. Its title is, "An Act to

(*a*) See *Graves* v. *Ashford* (1867), L. R. 2 C. P. 419.
(*b*) *Jefferys* v. *Baldwin* (1753), Ambl. 164; see *Pierpont* v. *Fowle*, 2 Wood. & Min. (Amer.) 46; *Bir* v. *Woodruff*, 4 Wash. (Amer.) 53.
(*c*) (1740), 2 Atk. 93.

amend and render more effectual an Act made in the 8 Geo. II., for Encouragement of the Arts of designing, engraving, and etching historical and other Prints, and for vesting in and securing to Jane Hogarth, widow, the Property in certain Prints" (*a*). The first section recites that the former Act had been found ineffectual for the purposes thereby intended, and enacts that all and every person and persons who shall invent *or* design, engrave, etch, or work in mezzotinto or chiaro-oscuro, any historical print or prints, or any other print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have the benefit and protection of the said Act and this Act, under the restrictions and limitation thereinafter mentioned. The second section enacts that all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have the benefit and protection of the said Act and this Act for the term thereinafter mentioned (twenty-eight years), in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and, if any person shall engrave, print, and publish, or import for sale, any copy of such print, contrary to the true intent and meaning of this Act and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as in the said Acts mentioned. The sixth section extends the period of protection to twenty-eight years from the first publication of the work (*b*).

The third Act.

By the next statute of 17 Geo. III. c. 57 (*c*), it was enacted, that if any person should within the times limited by the aforesaid Acts or either of them, engrave, etch, or work, or cause, or procure to be engraved, etched, or worked in mezzotinto, or chiaro-oscuro or otherwise, or in any other manner copy in the whole or in part, by varying, adding to, or diminishing from the main design, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which had been or should be engraved, etched, drawn, or designed in any part of Great Britain,

(*a*) This Act may by the Short Titles Act, 1892, be cited as "The Engraving Copyright Act, 1766."

(*b*) For the defective working of this Act, see Mr. Corrie's remarks in *Reg.* v. *Powell*, the 'Times,' November 10, 1862.

(*c*) This Act may by the Short Titles Act, 1892, be cited as "The Prints Copyright Act, 1777."

without the express consent of the proprietor or proprietors thereof, the proprietor should, by a special action on the case, recover damages against the person so offending.

Period of protection.

The period of protection which the authors of engravings, etchings, or prints enjoy under these Acts is therefore twenty-eight years to commence from the day of the first publishing thereof.

Who is the author?

The inventor of the subject of an artistic design, although himself unable to draw, may nevertheless have a copyright in the design in question, if he has employed another person to make the drawings for him, and communicated his ideas to that person (*a*). But the design must be the production of the party claiming the copyright, and difficulties may occasionally arise as to what constitutes a design within the meaning of the statute. "If," says Mr. Curtis (*b*), "the party personally engraves the subject of his conceptions, then he is both the inventor and designer; since he has not only conceived the subject of the picture, but has represented it in a visible form. But if the engraving is made by another under his direction, it must be made from his 'design'; and the question is, whether this term means only the intellectual conception, or work of the imagination, before it is reduced to some visible form, or whether it implies a drawing, or other visible representation of the invention, by the hand of its author. Under the American Act of 29 April, 1802, ch. 36, which contained a similar provision, it was held by Mr. Justice Washington, that the party must not only have invented but he must have designed or represented the subject in some visible form, from which the engraver who executes it must have taken the picture (*c*). The term 'design,' therefore, means the visible form given to the conception of the mind, and must be done by the inventor himself."

In the case of *Stannard* v. *Harrison* (*d*), relating to a map, an engraver was examined. He proved that the plaintiff had brought to him his rough sketch or draft, a drawing of the same size as the stone upon which it was to be engraved, pointing out a rough sketch of the forts and towns to give the engraver an idea; he furnished him also with a large French

(*a*) *Stannard* v. *Harrison* (1871), 19 W. R. 811; 24 L. T. 570; see *Kenrick* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99; 38 W. R. 779; *Petty* v. *Taylor* (1897), 1 Ch. 465. (*b*) Copy. 145.

(*c*) *Binns* v. *Woodruff*, 4 Washington Rep. (Amer.) 48. The Act of 1802 was in these words: "Any person being a citizen of the United States, or a resident within the same, who shall invent and design, engrave, etch, or work, or from his own works and inventions shall cause to be designed and engraved, etched, or worked, any historical or other print, shall have the right," &c. *Ib.* (*d*) *Ubi sup.*

map, and some maps published in the 'Times' and 'Daily Telegraph'; he also gave him notice daily of the earthworks that were made, and produced besides a picture published in the 'Illustrated London News.' The plaintiff could not draw himself—and the Vice-Chancellor said: "That the plaintiff cannot draw himself is a matter wholly unimportant if he has caused other persons to draw for him. He invents the subject of the design beyond all question. He prescribes the proportions and the contents of the design; he furnishes a part of the materials from which the drawing has to be made in the first instance, and afterwards collects daily from the proper sources, and even, if it be necessary to say so, from official sources, the decrees, the reports, the bulletins, and accounts contained in the newspapers of the different phases of the war, and especially of the places in which earthworks are thrown up. These he communicates to the man whom he has employed to make a drawing for him. . . . Can there be anything more plainly within the words of the Act of Parliament than that Mr. Stannard did himself invent, that he did procure another person to design and draw for him, and do that which he himself could not do?"

Name and date must be put on engravings.

In order to vest the copyright of an engraving in the designer or engraver of the same, no registration, such as is necessary in the case of literary copyright, is required; the Acts above enumerated have merely to be strictly complied with. In the first place, it is therefore important that engravings should contain the date of publication and name of the proprietor, in order to entitle the party to the penalties imposed by the statute Geo. II. The reason assigned by the Court in *Sayer* v. *Dicey* (*a*) being, "that any person may know when the proprietor's exclusive right ceases, and when, and against whom, he may be guilty of offending contrary to the statute." Lord Hardwicke, in an early case, doubted whether the clause on this subject in the Act ought to be construed as directory or descriptive, but he was of opinion that the property was vested absolutely in the engraver, although the *day* of publication was not mentioned, and compared it to the clause under the statute of Anne, which required entry at Stationers' Hall, upon the construction of which it had been determined that the property vested although the direction had not been complied with (*b*). However, it has subsequently been taken for

(*a*) (1770), 3 Wils. 60.

(*b*) *Blackwell* v. *Harper* (1740), 2 Atk. 95; Barn. Ch. Rep. 210. See *Jefferys* v. *Baldwin* (1753), Amb. 164; *Rocorth* v. *Wilkes* (1807), 1 Camp. 94; *Harrison* v. *Hogg* (1794), 2 Ves. Jun. 323; *Thompson* v. *Symonds* (1792), 5 T. R. 41.

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granted by the Court of King's Bench that both the name and date should appear; the *date*, Lord Kenyon observed, is of importance, that the public may know the period of the monopoly; the *name* should appear, in order that those who wish to copy it may know to whom to apply for consent (*a*).

As to the date.

So in *Harrison* v. *Hogg* (*b*) Lord Alvanley differed from Lord Hardwicke, considering the insertion of the name and date essential to the plaintiff's right; that the correct date is a *sine qud non* was expressly decided in *Bonner* v. *Field* (*c*). It was an action for pirating a print of the seal of the Countess of Talbot. The plaintiff had been employed by Lady Talbot to engrave this plate for her, which he executed on the 1st of June, 1778, when he took off some impressions for her use. On the *following day* she gave the plate to the plaintiff, who engraved on the bottom of it, "Drawn and engraved by J. Bonner; published on the 1st June, 1778, as the Act directs." The declaration having stated that the plaintiff was the proprietor on the 1st of June, Lord Mansfield nonsuited the plaintiff on the ground that he had no title on the day when he claimed it.

The cases were fully reviewed and commented on in the leading case on the subject of *Newton* v. *Cowie* (*d*). and it was held that the proprietor's name and the date of publication must appear on the original print, but that it was not necessary that the designation "proprietor" should be added to the name; and that the words on the print "*Newton del.*, 1*st May*, 1826, *Gladwin sculp.*," was a sufficient compliance with the provisions of the 8 Geo. II. c. 13. Best, C.J., on the occasion saying: "Looking at the subject-matter of the law, at the language employed by the legislature, and the practice which has uniformly been followed by engravers, we cannot hesitate to determine that the proprietors of these prints are entitled to the protection which is afforded by the statutes; a decision we have come to with satisfaction, seeing that they exercise a branch of art eminently useful and which in no slight degree *emollit mores nec sinit esse feros*. They contribute also by the

(*a*) *Thompson* v. *Symonds*, *supra*; *Macklurdo* v. *Smith* (1798), 7 T. R. 518; *Harrison* v. *Hogg*, *supra*.

(*b*) (1794), 2 Ves. Jun. 323; *Newton* v. *Cowie* (1827), 4 Bing. 234; *Brooks* v. *Cock* (1835), 3 Ad. & E. 138; 4 N. & M. 652; *Colnaghi* v. *Ward* (1843), 12 L. J. (Q.B.) 1; 6 Jur. 969; *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Graves* v. *Ashford* (1867), 15 W. R. 495; L. R. 2 C. P. 410; *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104; 27 L. T. 744. So the proprietor of a foreign print must have printed his name and the date of publication on the plate as required by 8 Geo. II. c. 13, in order to claim copyright under the International Copyright Act, 1844; *Aranzo* v. *Mudie* (1856), 10 Exch. 203.

(*c*) Cited 5 T. R. 44.

(*d*) (1827), 4 Bing. 234; 29 R. R. 541.

same means to the circulation of a knowledge of mechanics so necessary to our manufactures, and so useful to the best interests of the country."

The name of the first proprietor should be continued on the print, but it is not necessary or proper to place the name of an assignee on it (*a*).

Engravings or etchings when published with letter-press.

These essentials, in order to secure to the artist the copyright in engravings or etchings when published separately, are not requisite where the engravings form part of a book in which there is copyright, and the copyright in both the book and the print is vested in the same person; for the Copyright Act, 1842, gives a copyright in "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, manuscript, map, plan, or chart, separately published," and this definition, though it would not, of course, extend to prints or designs separately published, yet is sufficiently comprehensive to include prints and designs forming part of a book. The book is not less a book because it contains prints or designs, or other illustrations of the letter-press. A book must include every part of the book; it must include every print, design, or engraving which forms part of the book, as well as the letter-press therein, which is another part of it. If, therefore, the publisher of a book containing letter-press and engravings complies with the requisitions of the Copyright Act, 1842, he can restrain the copying of the engravings, though he has not complied with the requisitions of the Copyright Engravings Acts (*b*). It has been held, too, that if the proprietor of a periodical publishes a coloured supplement, the registration of the periodical will cover the supplement, though not physically attached to the periodical, if there is clear evidence that they are to be sold together and as parts of each other (*c*); but if the owner of the copyright in the letter-press is not the owner of the copyright in the engraving, then the requirements of both the literary and artistic Copyright Acts must be complied with (*d*).

Maps.

In regard to copyright in maps, there are two concurrent Acts relating to the same thing, the Literary Copyright Act, 1842 (5 & 6 Vict. c. 45), and the series of Acts, viz.: 8 Geo. II. c. 13; 7 Geo. III. c. 38; and 17 Geo. III. c. 57.

Maps published together or in connection with letter-press,

(*a*) See *Bonner* v. *Field* (1778), cited 5 T. R. 44.

(*b*) *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Maple* v. *Junior Army & Navy Co.* (1882), 21 Ch. D. 369; *Marshall* v. *Bull* (1901), 85 L. T. 77.

(*c*) *Comyns* v. *Hyde* (1895), 43 W. R. 266; W. N. (95) 9.

(*d*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

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obviously come within the head "book," and as such are included in the former Act.

Maps, charts, or plans, separately published, appear to be within the above Engraving Acts, or within the 3rd section of the Literary Copyright Act according to their nature. Viewed in the light of literary efforts they are entitled to copyright under the latter Act during the life of the author, and for seven years after his death, or for the term of forty-two years, as the case may be. Regarded as artistic works under the former statutes they are entitled to protection for an absolute term of twenty-eight years. Yet no action or suit in respect of an infringement of such copyright can be maintained under the 5 & 6 Vict. c. 45, until the author shall have previously registered in the manner prescribed by section 13 of the Act (*a*); nor under the Acts of Geo. II. and Geo. III., unless the proprietor shall have printed his name and the day of publication on every copy (*b*).

This appears to be the law on the subject, notwithstanding the impression receivable from the unguarded decision in *Stannard* v. *Lee;* and the inference from that case to be drawn would seem to be that if the proprietor wishes to sue in respect of an infringement without having registered, he must allege that it is an engraving, or otherwise bring it within the Acts of Geo. II. and Geo. III., which do not require registration, for in the event of his alleging he has printed and published "a map," the plea that the map has not been registered will meet the case; and this under the rule that every allegation is to be taken most strongly against the pleader, and therefore the defendant is entitled to say that the thing which the plaintiff alleged to be a map, was a map within 5 & 6 Vict. c. 45, and consequently required to be registered (*c*).

In *Stannard* v. *Lee* (*d*), where the plaintiffs printed and published on the 21st of July, 1870, a map described as 'No. 1, Stannard & Son's Panoramic Bird's-eye View of France and Prussia, and the surrounding countries likely to be involved in the war, with the railways and strategic positions of each army, and the great fortresses of the Rhine provinces,' and filed affidavits alleging in substance that they had formed a design of publishing maps illustrating the seat of war, and had "designed a map," and on the date

(*a*) *Stannard* v. *Lee* (1871), 19 W. R. 615; L. R. 6 Ch. 346; 23 L. T. 306.
(*b*) *Bogue* v. *Houlston* (1852), 5 De Gex & Sm. 267.
(*c*) See *Stannard* v. *Harrison* (1871), 19 W. R. 811. (*d*) *Ubi supra.*

above mentioned had "in accordance with the Acts of Parliament in that behalf," printed and published the said map by the above description, and that they were proprietors of the map; it was held, reversing Bacon, V.-C., that maps were now governed by the 5 & 6 Vict. c. 45, and that the plaintiffs not having registered under that Act, and in their pleadings alleging that their production was a "map," could not succeed in their action.

Vice-Chancellor Bacon, however, evidently adhered to his original decision in *Stannard* v. *Lee*, or rather to the exposition of the law there given, and in the case of *Stannard* v. *Harrison* (*a*), which was decided after the Lords Justices had reversed his decision in that case, he explained that they held the map in question not to be protected "because the plaintiff had alleged in his bill that he had invented a design," and published a "map," and the defendants there pleaded, relying on the large interpretation of the word "book" in the last Act, that the statute prohibited the institution of any suit before registration had been performed. But in the case then before him the facts were different. The plaintiffs carried on the business of lithographers and publishers, and had acquired a reputation as publishers of maps and lithographic views in the nature of maps during the American War, giving bird's-eye views in apparent relief of the seat of war. During the war between France and Germany the plaintiffs published a series of bird's-eye views or plans illustrating the seat of war, of which they sold a great number of copies. On the 1st of September, 1870, the plaintiff's published a bird's-eye view of Paris and its fortifications under the following description: "No. 8, Stannard & Sons Perspective View of Paris and its Environs, showing all the fortifications and redoubts, together with the lines of defence recently thrown up, and the roads, rivers, and railways communicating with the interior, compiled from the latest official sources by Alfred Concanen." The plaintiffs alleged that this view was duly designed, or caused to be designed and lithographed, and was duly printed and published by them in accordance with the provisions of the several Acts of Parliament made in that behalf, and that the lithographed copies of this view were prints within the meaning of these Acts. The defendants were the proprietors of a weekly periodical called the 'Gentleman's Journal and Youth's Miscellany,' and with the number of that journal of the 1st of November, 1870, they published a bird's-eye view of Paris and

(*a*) (1871), 19 W. R. 811; 24 L. T. 570.

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its fortifications, which the plaintiffs alleged was an imitation of their view and an infringement of their copyright. The plaintiffs accordingly filed their bill, and on the 19th of November, 1870, a decree was made by consent, by which a perpetual injunction was granted restraining the defendants from printing, publishing, or selling these views, directing an inquiry as to damages, and ordering the defendants to pay the plaintiffs' costs.

The defendants petitioned for a rehearing of the suit, or for leave to file a bill of review on the grounds, amongst others, that the plaintiffs had not registered their alleged proprietorship of copyright in the bird's-eye view in question at Stationers' Hall, pursuant to the 5 & 6 Vict. c. 45, s. 13; that the facts in the case were substantially the same as those in *Stannard* v. *Lee*; that on the authority of that decision, as the plaintiffs had not before the commencement of the suit registered their alleged proprietorship of the copyright, they were debarred by the 5 & 6 Vict. c. 45, from maintaining the suit, and that the statute precluded the Vice-Chancellor from making the decree, even with consent. Bacon, V.-C., however, dismissed the petition and refused to re-open the question, holding, apparently, that *Stannard* v. *Harrison* had been decided upon a point of pleading only (*a*).

The result of the two cases appears to be that what is popularly called a "map" may be so artistic as to fall within the Engravings Acts, but that, if it is not artistic, then the proprietor of the copyright must comply with the requisites of the Literary Copyright Act. This is certainly not a very satisfactory position, and proprietors of maps ought always to take the precaution of registering under the last-named Act before suing for infringement.

Christmas cards.

As to Christmas cards and pictorial post-cards, the mode in which the copyright should be secured depends to a certain extent on their nature and general character. Some are of such a nature as that protection may be found under the Engravings Acts of Geo. II. and Geo. III.; or the 25 & 26 Vict. c. 68, if in the nature of a painting, drawing, or photograph; others again may be registered under the Patents, Designs, and Trade Marks Act, 1883 (*b*).

As to what is an infringement.

What is an infringement is, in many cases, a difficult matter to solve. There can be no reason why a person should not be

(*a*) These cases are more fully dealt with *ante* pp. 132–135.

(*b*) In *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452, a Christmas card was held rightly registered under both the Act of 5 & 6 Vict. c. 45, as a "sheet of letterpress," and the Act 25 & 26 Vict. c. 68, as a painting.

liable where he sells a copy with a mere collusive variation, for a copy is defined to be that which comes so near to the original as to give to every person seeing it the idea created by the original (*a*).

Great solicitude is requisite to guard against two extremes equally prejudicial: the one, that men of ability, who have employed their energies for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the community may not be deprived of improvements, nor the progress of the arts retarded. The Act which secures copyright to authors, guards against the piracy of the words and sentiments, but it does not prohibit writing on the same subject. As in the cases of histories and dictionaries: in the first, a man may give a relation of the same facts, and in the same order of time; in the latter, an interpretation is given of the identical words. In all these cases the question of fact to come before a jury is, whether the alteration be colourable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a mere transcript. So in the case of prints, no doubt different men may take engravings from the same picture. There is no monopoly of the subject here any more than in the other instances, but upon any question of this nature, the jury will have to decide whether it be a servile imitation of not (*b*).

The first engraver does not claim the monopoly of the use of the picture from which the engraving is made; he says: Take the trouble of going to the picture yourself, but do not avail yourself of my labour, who have been to the picture and have executed an engraving (*c*).

An engraver has no monopoly in the subject.

Where an engraving is made of an object in nature, as of a particular flower or plant, the artist cannot restrain any one from executing a similar print of the same flower or plant; but no one is allowed to copy from the work of another person, each must draw from nature. When it was contended before Lord Hardwicke (*d*) that some engravings of plants could not be protected, because every herbal-book had prints of those plants in them, he observed: "The defendant, to make out the case he aims at, must show me that these prints of medicinal plants are in any book or herbal whatsoever, in the *same manner and*

(*a*) *West* v. *Francis* (1822), 5 Barn. & Ald. 737. See *Roworth* v. *Wilkes* (1807), 1 Camp. 94; *Moore* v. *Clark* (1842), 9 M. & W. 692.
(*b*) *Sayre* v. *Moore* (1785), 1 East, 361, n.
(*c*) *De Berenger* v. *Wheble* (1819), 2 Stark. N. P. C. 548.
(*d*) *Blackwell* v. *Harper* (1740), 2 Atk. 94; S. C. Barn. 210.

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form as they are represented here; for they are represented in all their several gradations, the flower, the flower-cup, the seed-vessel, and the seed."

So on the same principle if two persons should *bonâ fide* make engravings from a perusal of the same text, although there might, and probably would be, a similarity between them, yet each would acquire a copyright in the engraving which he had made.

An engraver is almost invariably a copyist, and if engravings from drawings were not to be deemed within the intention of the legislature these Acts would afford no protection to that most useful body of men, the engravers. The engraver, although a copyist, produces the resemblance he is desirous of obtaining by means very different from those employed by the painter or draughtsman from whom he copies: means which require great labour and talent. The engraver produces his effects by the management of light and shade, or, as the term of his art expresses it, the *chiaro-oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots for himself, and on his choice depends the success of his print. If he were to copy from another engraving, he might see how the person who engraved that had produced the desired effect, and so without skill or attention become a successful rival (*a*).

Foreign engravings.

It is not enough to entitle prints to protection under the Engraving Acts that they have been published in Great Britain. In a case where the prints had been struck off abroad from plates engraved abroad, it was held that they were not entitled to protection, though the first publication had been in England (*b*).

Engraving Acts extended to Ireland.

The engraving Acts were extended to Ireland in 1837. By the 6 & 7 Will. IV. c. 59 (*c*), it was enacted that, from and after the passing of that Act, if any engraver, etcher, print-seller, or other person should, within the period limited for the protection of copyright in engravings, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving in print of any description whatsoever, either in

(*a*) *Newton* v. *Cowie, per* Best, C.J. (1827), 4 Bing. 246; *Martin* v. *Wright* (1833), 6 Sim. 297.

(*b*) *Page* v. *Townshend* (1832), 5 Sim. 395. As to protection under the International Copyright Acts see *post*.

(*c*) This Act may, by the International Copyright Act, 1886, be cited as "The Prints and Engravings Copyright Act, 1836." By the Short Titles Act, 1892, this Act may be cited as "The Prints and Engravings Copyright (Ireland) Act, 1837," and by the same Act the whole group of Copyright Acts may be cited by the collective title of "The Copyright Acts."

whole or in part, which might have been or which should thereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him, her, or them respectively with his, her, or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor might, by and in a separate action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, should give or assess.

Engravings Acts to include lithographs.

The 15 & 16 Vict. c. 12, s. 14 (*a*), declares that the provisions of this Act and the Engravings Acts collectively are intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

The right in engravings may be infringed by photography.

It is therefore an infringement of the copyright given by the Engraving Acts to copy by photography, or sell a photographic copy of a print in which a copyright has been acquired under these Acts (*b*). The question arose some years ago.

It was in an action for the infringement by the defendant of the plaintiff's copyright in two engravings, the one from Rosa Bonheur's 'Horse Fair,' and the other from Holman Hunt's 'Light of the World.' It was proved that the plaintiff was the proprietor of these two engravings, and that the defendant had copied them on a very reduced scale by means of photography, and sold a great number of copies. The point was argued before the Court of Common Pleas, and it was unanimously decided that all processes for the indefinite multiplication of copies, whether mechanical or otherwise, were within the Acts for the protection of artists and engravers; and that when they declare mechanical processes of multiplying copies to be within them, no doubt they would have also thus declared the multiplication by means of photography, if the art of photography had then been known. If the object of the Acts of Parliament on the subject were, not simply to protect the reputation of the artist or the engraver, but to protect him against the invasion of his substantial commercial property in the work of his genius or of his industry, it is

(*a*) The International Copyright Act, 1852.

(*b*) *Gambart* v. *Ball* (1863), 14 C. B. 306; 9 Jur. (N.S.) 1059; 11 W. R. 699; 32 L. J. (C.P.) 166; *Graves* v. *Ashford* (1867), 15 W. R. 495; L. R. 2 C. P. 110; 16 L. T. 98; 36 L. J. (C.P.) 139.

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plain that he sustains an injury by another offering a photographic copy which is capable of exciting in the mind of the beholder the same or somewhat similar pleasurable emotions as would be communicated by a copy of the engraving itself. The value of the artist's property would be sensibly diminished were the multiplication of copies by means of photography held to be lawful. In the case above referred to, Chief Justice Erle, in passing judgment, said: "In the representation of 'The Horse Fair,' we feel the same degree of pleasure in looking at the forms and attitudes of the beautiful animals there portrayed, whether we see them in the size in which they are drawn in the original picture, or in the reduced size of the engraving, or in the still more diminished form in which they appear in the photograph. . . . The object of the statute to my mind, was, not merely to prevent the reputation of the artist from being lessened in the eyes of the world, but to secure to him the commercial value of his property, to encourage the arts, by securing to the artist a monopoly in the sale of an object of attraction. . . . It seems to me that the making of copies in that way and selling them is within the words as well as the meaning of the Act" (*a*).

Though the language of the statute includes, as we have seen, copies made by mechanical or chemical process, and capable of being multiplied indefinitely, yet it has been doubted whether it would include copies made by hand or designs transferred to an article of manufacture.

Whether statute includes designs transferred to articles of manufacture.

At the date of the first edition of this work it had not been decided whether the words of the statute would include designs transferred to an article of manufacture (*b*).

The point, however, subsequently arose in the case of *Dicks* v. *Brooks* (*c*). Plaintiffs were the publishers and proprietors of a weekly periodical called 'Bow Bells.' Defendants were the proprietors by assignment of the copyright of a print called 'The Huguenot,' engraved from Millais' picture, and of a photograph taken from the print. The plaintiffs had published for their Christmas number of 1877 a chromo-printed pattern for wool-work, called 'The Huguenot,' taken, as they stated, from a Berlin wool pattern which had been imported by a German warehouse. The leading incident of Millais' picture, the farewell of two lovers of different creeds on the eve of the massacre of St. Bartholomew, was to be found in the Berlin wool pattern,

(*a*) This judgment was confirmed on appeal by the Court of Exchequer Chamber.
(*b*) See remarks of Byles, J., in *Gambart* v. *Ball* (1863), 32 L. J. (C.P.) 166, 168.
(*c*) (1880), 1 [illegible]iv. 22.

but a different background had been introduced, and the colours were not the same as those of the picture. In December 1877, the defendants issued a circular containing a warning against the sale of any copy of the subject, 'The Huguenot,' without the stamp or imprint of their firm, in whom the sole subsisting copyright existed, and that all such unstamped copies were imitations and unlawfully made. The plaintiffs, alleging that the publication of this circular was a false and malicious libel on their print and pattern, which was not an imitation of any picture to the copyright of which the defendants were entitled, and that their sale of the publication had been greatly damaged by such circular, brought an action to restrain, and obtain damages for, this alleged libel and slander of title. The defendants by their statement of defence and counterclaim asserted their title to the engraving, averring that the plaintiffs had unlawfully copied it in whole or in part, and greatly damaged the defendants' property therein; and they claimed an injunction and the penalty of 5*s.* under the Act 8 Geo. II. c. 13, for every copy sold by the plaintiffs, and damages.

Vice-Chancellor Bacon held that the defendants had the exclusive right of publishing the subject delineated in the print taken from Millais' picture. He considered that the plaintiffs' pattern was to all intents and purposes a direct copy of that print. Were they then entitled, said he, to despoil the defendants of their property, and foist upon the public a very coarse imitation of a very celebrated picture? Being mere pirates, they complained that their title was being slandered, and that they were injured by the circular issued by the defendants for the protection of their property. It was the old story of the wolf and the lamb. There was no pretence for the first action, which he accordingly dismissed with costs; and as the defendants had established the right set up by their counterclaim to restrain this piratical publication by the plaintiffs, he decided that they were entitled to the statutory penalty of 5*s.* for every copy sold by the plaintiffs. The court, however, on appeal held that a pattern for Berlin wool-work could not be regarded as a copy of an engraving within the meaning of the statutes, inasmuch as though there was a reproduction of the design, there was no reproduction of anything which constituted the work of the engraver. And they accordingly reversed the judgment of the Vice-Chancellor.

In delivering the judgment of the Court of Appeal, Lord Justice James said: "The question before us resolves itself into this, whether this pattern for working in Berlin wool is a

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piratical copy of the print of which the defendants are the proprietors. It appears to me that the Vice-Chancellor fell into (if I may venture so to call it) the error of supposing that the case was within the Act 8 Geo. II. c. 13, which gave a protection, not to a mere engraver, but to a man of genius who by his industry, pains, and expense, invented a design, 'or engraved, etched, or worked, or from his own work and invention caused to be designed and engraved, etched, or worked,' and so on, 'any historical print.'

"Those words were intended to give protection for the genius exhibited in the invention of the design, and the protection was commensurate with the invention and design. That Act was afterwards extended to embrace the case of persons engraving from something which was not the design of the engraver. Now it appears to me that the protection given by the subsequent Acts to the mere engraver was intended to be, and was commensurate with, that which the engraver did, and the engraver did not acquire against anybody in the world any right to that which was the work of the original painter, did not acquire any right to the design, did not acquire any right to the grouping or composition, because that was not his work but the work of the original painter. What, as it seems to me, the Act gave him, and intended to give him, was protection for that which was his own meritorious work. The art of the engraver is often of the very highest character, as in the print before me. It is difficult to conceive any skill or art much higher than that which has by a wonderful combination of lines and touches reproduced the very texture and softness of the hair, the very texture and softness of the dress, and the expression of love and admiration in the eyes of the lady looking up at her lover. That art or skill was the thing which, as I believe, was intended to be protected by the Acts of Parliament, and what we have to consider is, whether the wool pattern before us (the maker of which must have been aided in the production of it by having before him the defendant's print, or some kind of copy of it, because the wool pattern follows the print in some particulars in which the engraving differs from the picture) is a copy of the engraver's work? It appears to me that without going into any etymological definitions of the word 'copy,' and using the word in the ordinary sense of mankind as applied to the subject-matter, the question is, Is this a copy, is it a piracy, is it a piratical imitation of the engraving—of that which was the engraver's meritorious work in the print? I am of opinion, as

a matter of fact, that the wool pattern is not a copy, is not a piratical imitation, with colourable variations of the defendant's engraving. The alleged copy is not a thing intended as a print in the ordinary sense of the word. It was intended to be printed, and was printed, as a pattern for Berlin wool, not put forward in any way fraudulently or as a sham, but really in truth intended solely for that purpose. Now, I am of opinion that whatever may be the similarities between the one and the other, the attempt not to reproduce the print, but to produce something which has some distant resemblance to the print, not by anything in the nature of the engraver's work, but by what I may call a mosaic of coloured parallelograms, is not in any sense of the word a piratical imitation of the print. Nobody would ever take it to be the print, nobody would ever buy it instead of the print, nobody would ever suppose that it was, to use the language of the first Act, a base copy of the print. It is a work of a different class, intended for a different purpose, and, in my opinion, no more calculated to injure the print *qua* print, or the reputation of the engraver, or the commercial value of the engraving in the hands of the proprietor, than if the same group were reproduced from the same engraving by waxwork at Madame Tussaud's, or in a plaster of Paris cast, or in a painting on porcelain. I cannot conceive that such a reproduction of the subject in tapestry, or Berlin wool, or upon china, or in earthenware, is within the meaning of the Act of Parliament. Whether dealing with it as a matter of law, or dealing with it, as we must do, as a matter of fact, I am satisfied that the appellant's pattern is not a copy or piracy of any part of that which constituted the real merit and labour of the engraver of the defendant's print" (*a*).

The defendants in this case were not the proprietors of the copyright in the original picture 'The Huguenots,' but it is doubtful whether if they had been the decision would have been in their favour. In a recent case where the proprietors of the copyright in a picture under the 25 and 26 Vict. c. 68 complained that certain tableaux vivants, or 'Living Pictures,' were infringements of their rights, it was held, following *Dicks* v. *Brooks*, that such performances were copies neither of the picture nor of its design (*b*).

What not an infringement.

The words of the 17 Geo. III. c. 57 are: "If any person

(*a*) (1880), 15 Ch. Div. 22.

(*b*) *Hanfstaengl* v. *Empire Palace* (1894), 3 Ch. 109; S.C. *sub nom. Hanfstaengl* v. *Baines & Co.* (1895), A. C. 20. This case is more fully considered in the Chapter on Paintings, Drawings and Photographs, *post*.

shall copy in the whole, or in part by varying, adding to, or diminishing from the main design," but where the print or engraving differs materially from the original in character, and is dealt with in a different manner, the former cannot be considered a piracy of the latter within the Engraving Acts. Thus in 1821, plaintiff, a celebrated artist, composed and painted from sketches he had designed a picture called 'Belshazzar's Feast,' which he shortly afterwards sold. In 1826 he engraved and published from the sketches a print of the same name, having previously done all necessary acts for securing to himself the copyright of the print. The defendant having purchased one of the prints, had it copied on canvas in colours on a very large scale, with dioramic effect; and he publicly exhibited such dioramic copy at the Queen's Bazaar in Oxford Street for money, describing it, in his handbills and advertisements, as "Mr. Martin's grand picture of 'Belshazzar's Feast,' painted with dioramic effect. The plaintiff applied for an injunction, but the Vice-Chancellor refused to grant one on the ground that exhibiting for profit was in no way analogous to selling a copy of the plaintiff's print, but was dealing with it in a very different manner. The Engravings Acts were not intended to apply to a case where there was no intention to print, sell, or publish, but to exhibit in a certain manner. "If, however," added the Vice-Chancellor, "Martin had exhibited his picture as a diorama, then he might have been entitled to an injunction" (*a*).

The statutes do not apply to the sale of prints taken from the original plate with the consent of the proprietor. In *Murray* v. *Heath* (*b*) where the defendant, an engraver, took a number of impressions from a plate engraved by himself, but for the use of the plaintiff, he being permitted to retain certain copies, but not to sell them; afterwards defendant became bankrupt, and his assignees advertised the copies retained for sale. In an action for damages in which the assignees were co-defendants, the defence was set up that the copies had not been unlawfully printed or imported, and therefore their sale was not piracy. The court held that the sale complained of, though a breach of contract, was not a violation of copyright, and consequently that no action was maintainable under the 17 Geo. III. c. 57.

(*a*) *Martin* v. *Wright* (1833), 6 Sim. 297; *Page* v. *Townsend* (1832), 5 Sim. 395.
(*b*) (1831), 1 Barn. & Adol. 804. As to rights of purchasers of blocks for reproducing illustrations, see *Cooper* v. *Stephens* (1895), 1 Ch. 567; *Marshall* v. *Ball* (1901), 85 L. T. 77.

So, upon a similar principle, it was held in *Mayall* v. *Higbey* (*a*) that a person who lends photographs to another for a particular purpose, may prevent him from taking and selling copies, except in pursuance of the purpose for which they were lent, and this, although the photographs have been published, and irrespective of the question of copyright. The above was a case in which the plaintiff had lent photographs of eminent persons to Tallis, the proprietor of the 'Illustrated News of the World,' for the purpose of engraving them for that newspaper. Tallis became bankrupt, and the assignees sold the photographs to the defendant; and it was held that the plaintiff was not only entitled to the photographs but to the unsold copies, and to an injunction to restrain the further sale. The court said that there was no question of copyright, and compared it to the case of a valuable statue, which a friend to whom it is lent had no right to get copied.

In what class of engravings no copyright.

No copyright can exist in any obscene, immoral, or libellous engraving (*b*); and were one to destroy such a print or engraving, he would merely be liable at law to pay the value of the paper and print (*c*).

An assignee may maintain an action for the piracy of an engraving, although the statute does not expressly give him that right (*d*). Also it has been held in Scotland necessary to allege where the piracy has been committed (*e*).

Assignment.

The Engraving Acts do make any express provisions as to assignment, but a licence must be in writing signed by the proprietor of the copyright in the presence of two or more credible witnesses. It will be advisable, therefore, that an assignment, which confers a higher right, be accompanied by similar formalities (*f*).

Remedies for infringement.

The remedies for piracy under the Engraving Acts are (a) Penalties; (b) damages; (c) an injunction.

(a) Penalties.

The penalties imposed by the 8 Geo. II. c. 13, s. 1, are five shillings for every copy and destruction of the prints and

(*a*) (1862), 1 H. & C. 148.

(*b*) See 5 Geo. IV., c. 83, s. 4; 1 & 2 Vict. c. 38, s. 2; 20 & 21 Vict. c. 83; *Fores* v. *Johnes* (1802), 4 Esp. 97; *Bauchet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73.

(*c*) *Du Bost* v. *Beresford* (1810), 2 Camp. 511. In *The Emperor of Austria* v. *Day and Kossuth* (1862), 7 Jur. 641, Ch.; on appeal, 4 L. T. 494, the Lord Chancellor stated that the cases of *Barnett* v. *Chetwood* (2 Mer. 441, note) and *Du Bost* v. *Beresford*, *supra*, were wrongly decided. Compare the fact of the liability of the destroyer for the amount of the paper, with the maxim in Moor. 813: "*Inveniens libellum famosum et non corrumpens punitur*," and, *if possible*, reconcile the two.

(*d*) *Thompson* v. *Symonds* (1792), 5 T. R. 41.

(*e*) *Graves* v. *Logan*, 7 Sc. Sess. Cas. 3rd Ser. 204.

(*f*) See *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815, 994, 995, and see *ante* p. 143 *et seq.*

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plates. The persons who are liable for the penalties are, first, the person who engraves, etches, or otherwise copies the print, and sells such copies or prints or imports the same or any part thereof for sale without the proprietor's consent; and, secondly, the person who, without such consent, publishes, sells, or exposes to sale any copy of such print, knowing that it has been printed without the proprietor's consent. Under this section, therefore, the print must be for sale, and a mere vendor is only liable for penalties if he had guilty knowledge.

(b) Damages.

If the print has been copied, but not for sale, then the only remedy of the proprietor of the copyright is in damages; but if the copies have been made for sale, then he can obtain both penalties and damages. The remedy by action for damages is conferred by the 17 Geo. III. c. 57, which enacts that a special action on the case may be brought against a person who pirates another's engraving, to recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry, may give. The section also applies to a mere seller of the prints, and though, as we have seen, such a person is only liable for penalties if he had guilty knowledge, in an action for damages ignorance will be no excuse (*a*).

Limitation of actions.

The time within which proceedings must be taken to recover penalties is six calendar months after the offence (*b*); but there is no limitation for an action for damages (*c*).

Summary proceedings for the recovery of penalties.

In concluding, we will offer a few remarks on the remedy afforded by a later Act of Parliament for the recovery of the penalties for infringement under the Engravings Acts. The mode of recovery was much simplified by the 8th section of the 25 & 26 Vict. c. 68, commonly known as the Copyright (Works of Art) Act (*d*). By this clause all pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders pursuant to any Act for the protection of copyright engravings, may be recovered by the person empowered to re-recover the same, and thereinafter called the complainant or the complainer, as follows:

In England and Ireland.

In *England* and *Ireland*, either by action against the party

(*a*) *West* v. *Francis* (1822), 5 Barn. & Ald. 737: 1 D. & R. 400; *Gambart* v. *Sumner* (1859), 1 L. T. 13; 5 Hurl. & Nor. 5; *Clement* v. *Maddick* (1859), 1 Giff. 98; 5 Jur. (N.S.) 592.

(*b*) Either under the 17 Geo. III. c. 38, s. 3, or under the Public Authorities Protection Act, 56 & 57 Vict. c. 61.

(*c*) See *Graves* v. *Mercer*, 16 W. R. 790.

(*d*) By the Short Titles Act, 1892, citable as "The Fine Arts Copyright Act, 1862."

offending, or by summary proceedings before any two justices having jurisdiction where the party offending resides (*a*).

In Scotland.

In *Scotland*, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by pounding; provided always that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable to expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

It will be observed here that though the procedure of the 25 and 26 Vict. c. 68 is extended to the Engravings Acts, yet the penalties recoverable are only those given by the Engravings Acts.

Orders for inspection or account.

Further, it is declared lawful for the superior courts of record in which any action may be pending, or if the courts be not then sitting, then for a judge of one of such courts, on the application of either the plaintiff or defendant, to make an order for an injunction, inspection, or account, as to such court or judge may seem fit.

As pirated copies are made very much to resemble the original in particular parts, and to be totally distinct in other parts, care should be taken to draw the statement so as to charge the defendant with *copying part*, as well as with copying the whole (*a*).

Evidence on behalf of plaintiff.

The evidence to be adduced at the trial on behalf of the plaintiff is simply that he is the proprietor of the print or engraving pirated; and it is sufficient that he produce one of the prints taken from the original plate. The production of the plate itself is not requisite.

(*a*) A magistrate sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, or the Lord Mayor, or an alderman of London, sitting at the Mansion House, or Guildhall Justice Rooms, has power, when sitting alone, to exercise the jurisdiction given by this Act to two justices. 2 & 3 Vict. c. 71, s. 14; 11 & 12 Vict. c. 43, ss. 29, 33, 34; see also 21 & 22 Vict. c. 73; 42 & 43 Vict. c. 49, and 47 & 48 Vict. c. 43.

(*b*) *West* v. *Francis* (1822), 5 Barn. & Ald. 737; and 1 Dowl. & Ry. 400, cited Godson on Patents, &c., 301.

CHAPTER II.

COPYRIGHT IN SCULPTURE AND BUSTS.

The art of sculpture.

THE art of sculpture has never been particularly favoured by the English nation. It is an art which ought certainly to be patronized more extensively, for it refines and improves the public mind and taste.

The erection of national monuments to the memory of individuals who by their works or their virtues have conferred lasting benefit or honour on mankind in general or their own country in particular, or in order to commemorate important public events, is a means by which the art produces the most influential moral effects.

These mementoes or memorials, though in the present age the unphilosophical and sciolistic spirit of some have led them to regard with contempt this method of honouring the illustrious great, excite a laudable admiration for the service or benefit to which they testify, and are living realities to perpetuate at once the respect entertained by the nation, both for the individual himself and the performance that has entitled him to their gratitude. When efficiently executed, they not only perpetuate the memory of the individual himself and record his good deeds, but appeal continuously to the national mind, and encourage and stimulate all posterity to follow in his footsteps. The person represented seems to be ever present. The deeds commemorated appear still in vivid force, and although we have not the actual presence of the departed, we retain his remembrance and preserve much of his influence.

"Public monuments, moreover," says Mr. Harris (*a*), "give a character to a nation and record the existence of what are in reality its noblest treasure,—the great men who have adorned it. They much influence the genius of a people, and in their turn exhibit the national feeling and genius. Indeed, the moral effect of these erections, both in ancient and modern times, has been made obvious. . . . . The essential advantage

(*a*) "Civilization considered as a Science."

in regard to civilization arising from the national veneration paid to heroes and great men, results from the stimulus which it excites to emulate their virtues, and to shun all those vices which are opposed to the latter, and by which lustre like theirs would be tarnished. The use of monuments in this respect is two-fold: first, to preserve the memory of those great men to whom they are erected, and of their virtues also; secondly, to testify the regard of the nation for those great men and for the virtues which they displayed. In both these respects, they are extensively and directly conducive to civilization, and are calculated to carry it to its highest point."

On these social grounds, therefore, it is incumbent upon the legislature to cherish and encourage an art yielding fruit such as this is capable of bearing.

Busts of private individuals are not likely to have much value as copyright, but busts of great men have a general interest and value. The demand for copies is so small that seldom is it that piracy takes place. The only case till recent years in which we remember the Sculpture Act being applied, is that of a bust of Fox (*a*).

The means of reproduction by a cast is very simple and merely mechanical (at least, after a single copy has been obtained), and this fact accounts for the limited application of the Act. Most of the ornamental casts in request are taken from foreign works of art, or from such as have been dedicated to the public by exposure or become public property; seldom is the licence of the original designer required. There is little skill in the preparation of the type-mould, which corresponds to the plate of the engraver, unless, perhaps, where the scale is reduced (*b*).

Extent and duration of Acts.

The copyright in busts and sculptures depends upon the 54 Geo. III. c. 56 (*c*). This Act amended and extended the provisions of the 38 Geo. III. c. 71 (repealed by the Statute Law Revision Act, 1891), which had been found ineffectual for the purposes thereby intended. So ineffectual had it proved that although avowedly passed for the preventing the piracy of busts and other figures made and published by statuaries, it was decided to be no offence to *sell* a pirated cast of the bust if the piracy had any addition to or diminution from the original; nor was it an offence to *make* a pirated cast if it were a perfect *fac-simile* of the original (*d*). Lord Ellenborough

(*a*) *Gahagan* v. *Cooper* (1811), 3 Camp. 111.
(*b*) Turner on 'Copyright in Design.'
(*c*) By the Short Titles Act, 1892, citable as "The Sculpture Copyright Act, 1814."
(*d*) *Gahagan* v. *Cooper*, *supra*.

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thought the statute had been passed with a view to defeat its own object, and taking advantage of the opportunity of making a joke, which the bar, as a matter of duty, had to imagine exceedingly good, advised artists when they applied to Parliament for further protection, not to *model* the new Act themselves as they appeared to have done the one in question.

The 54 Geo. III. c. 56 (18th of May, 1814), enacts that every person or persons who shall make or cause to be made (1) any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals or any part or parts of any animal, combined with the human figure, or otherwise, or of any subject being matter of invention in sculpture (*a*); or (2) of any alto- or basso-relievo representing any of the matters or things thereinbefore mentioned; or (3) any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things thereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human frame or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto- or basso-relievo, representing any of the matters or things thereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same.

Period of protection.

After the expiration of this term of fourteen years the copyright shall return to the person who originally had the copyright, if he be then living, for the further term of fourteen years.

Conditions on which copyright depends.

In all and every case the proprietor or proprietors of the copyright must cause his, her, or their name or names, with the date, to be put on all and every such new and original

(*a*) *Caproni* v. *Alberti* (1891), 8 T. L. R. 146; 65 L. T. 785.

sculpture, model, copy, and cast, and on every such cast from nature, before the same shall be put forth or published.

If a recent decision of Mr. Justice Wright is to stand as good law, the courts will not require these conditions to be strictly complied with. In the case referred to (*a*) it was held that an approximate date, and the name of one member of a partnership firm, being the actual maker and designer of the cast, was a sufficient compliance with the provisions of the Act; but sculptors may not meet with such leniency in other cases and they cannot be advised to rely on the decision.

What is publication?

The copyright is to run from the "first putting forth or publishing the same." The property secured by the Act seems to be comprehensive enough to embrace the right of public exhibition. The opinion has been judicially expressed that, within the meaning of the statute, a work may be published by being publicly exhibited (*b*). In *Turner* v. *Robinson*, Lord Chancellor Brady said: "In the statutes bestowing protection upon works of sculpture, the terminus *a quo* from which the protection commences is the publication of the work, that is, from the moment the eye of the public is allowed to rest upon it. Many large works in this branch of art, which decorate public squares and other places, are of course so published, but there are others not designed for such purposes which could never be published in any other way than in exhibitions; therefore I apprehend that these works of sculpture must be considered as published by exhibition at such places as the Royal Academy and Manchester, so as to entitle them to the protection of the statutes from the date of publication" (*c*).

What protected by the Act.

The question was recently raised (*d*) whether the casts of flowers and fruit were within the protection afforded by the Act. The plaintiffs, since 1880, had carried on the business of modellers, sculptors, and makers of casts, and supplied casts to schools and art classes entitled to grants in aid from the Department of Science and Art. The defendant copied three of the plaintiffs' designs upon the application for casts made to him by a person connected with one of the art schools in Manchester, and sold the casts so copied for 3*s.* or 5*s.* each cast, being considerably under the price charged by the plaintiffs.

(*a*) *Britain* v. *Hanks* (1902), 86 L. T. 765.

(*b*) *Turner* v. *Robinson* (1860), 10 Ir. Ch. 516.

(*c*) The Royal Commissioners proposed that the term of copyright in all works of fine art other than photographs should be the same as for books, music, and the drama, namely, the life of the artist, and thirty years after his death; par 95. It was so provided in Lord Thring's Copyright (Artistic) Bill, 1900.

(*d*) *Caproni* v. *Alberti* (1890), 8 T. L. R. 146; 65 L. T. 785; W. N. (91) 200.

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On one of the casts some of the letters contained in the name of the plaintiffs appeared, that name having been partly scratched out. On the others no name appeared, the name having been scratched out after the cast had been taken. The defendant, whilst admitting having copied the designs, contended that that was no cause of action, as the 54 Geo. III. c. 56 did not apply to a cast of flowers or fruit. The plaintiffs had not registered under the Designs Act, 1850, 13 & 14 Vict. c. 104, s. 6, or under the Patents, Designs, and Trade Marks Act, 1883. The court held that the productions in question came within the Act, and were within the words "being matter of invention in sculpture," and granted an injunction.

Toy soldiers.

It has been held that toy soldiers may be entitled to protection. In the case referred to, Mr. Justice Wright remarked: "The question is whether this toy representation of a soldier is an artistic thing—an artistic production within the meaning of the Sculpture Copyright Act, 1814. It is tolerably certain that some toys would not fall within the protection of the Act; and the question whether this soldier or mounted yeoman's figure comes within it must be decided upon evidence of its artistic character. The evidence before me is all one way. A war correspondent has been called, who is at the same time an artist and has shown several of these figures to be artistic productions, in that the anatomy is good and that the modelling shows both technical knowledge and skill. I see nothing to quarrel with in this statement. On the whole, therefore, although I have great doubt as to the meaning of the Act, I am prepared to hold that the production of a metal figure of a mounted yeoman such as this is good enough to be protected by the provisions of the Act" (*a*).

Conditions to be complied with in order to effectuate a copyright.

The conditions under which the copyright is acquired are almost identical with those required to be performed in order to obtain a copyright under the Engravings Acts. When a sculptor models a design for himself, and afterwards executes from such model a finished bust for another in marble or any other material, it is not sufficient for the sculptor, in order to acquire the copyright therein, to affix his name and the year when the finished copy from the model was executed (as is frequently the case); he must conform strictly to the letter of the Acts (*b*), and therefore engrave on the *model*, as well as on every cast or copy thereof, his name (*c*), and the day of the

(*a*) *Britain* v. *Hanks* (1902), 86 L. T. 765.

(*b*) As under the Designs Act, see *Pierce* v. *Worth* (1869), 18 L. T. 710; but see *Britain* v. *Hanks* (1902), 86 L. T. 765.

(*c*) The name need not necessarily be the baptismal and surname of the proprietor, but such as he or his co-proprietors are commonly known by or trade under.

month and year when the model is first shown or otherwise published in his studio, or elsewhere; and such *date must never be altered.*

Assignment of the right.

By the 54 Geo. III. c. 56, s. 4, it was further provided that no person who should thereafter purchase the right or property of any new and original sculpture, or model, or copy, or cast, or of any cast from nature, of the proprietor, expressed in a deed in writing signed by him in the presence of and attested by two or more witnesses, should be subject to any action for copying, or casting, or vending the same (*a*).

Registration.

Sculptures and models had to be registered under the Designs Act (13 & 14 Vict. c. 104, s. 6); but this is one of the Acts repealed by the Patents, Designs, and Trade Marks Act, 1883. The only section in this last Act at all affecting registration of sculptures seems to be the 114th, by which it is provided that the register of designs kept under any enactment repealed by the Act of 1883 shall respectively be deemed parts of the same book as the register of designs under that Act. The result apparently is that it is not now necessary to register the copyright or proprietorship in sculptures or busts.

How right infringed.

To make or import, or cause to be made or imported, or exposed for sale or otherwise disposed of any pirated copy or pirated cast, whether it be produced by moulding or copying from or imitating in any way the original is an infringement of the copyright given by the Act (*b*); but apparently it is not an infringement to draw or photograph the model or cast.

In a recent case, the plaintiff had invented a certain process for producing brass model casts of her Majesty the Queen, for which he obtained a considerable sale. In April 1902, an imitation of one of the busts manufactured by the plaintiff came into his possession. On behalf of the plaintiff a wholesale importer of toys was called, who stated that the defendant had brought him a model similar to the model which the plaintiff's were in the habit of making, and asked him for orders to supply him with model busts of the same character; but the witness refused, and warned the defendant that the model was an infringement of the plaintiff's copyright. Though Mr. Justice Wright had no doubt that the plaintiff's models possessed such artistic merit as to entitle them to protection, he held that there was no evidence of the defendant having "caused to be exposed for sale or otherwise disposed of" the

(*a*) See form of assignment, Crabb's Prec. (*b*) Sect. 3.

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pirated copy, and he refused either damages or an injunction (*a*).

Remedies.

The remedies for infringement are (a) an action for damages under section 3; (b) an injunction.

The 7th section of the 13 & 14 Vict. c. 104 provided penalties for infringement, but this provision, as we have already seen, has been repealed by the Patents, Designs, and Trade Marks Act, 1883.

Actions for damages must be brought within six months from the discovery of the offence (*b*).

Proposed alterations in the law.

In conclusion, we must express a hope that protection will before long be afforded to the sculptor against drawings or engravings of any description, which may now be taken from his work with impunity. If the sculpture be a production of any merit and value, if well designed and engraved, it might be profitable to the author in various ways; while, on the contrary, if it be badly or carelessly executed, it may be alike annoying to him and injurious to his reputation and fame.

On this subject the Royal Commissioners in their report on Copyright, 1878, say: "Upon the whole we are disposed to think that every form of copy, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright, It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

"It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act, but we recommend that such doubts should be removed, and that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work" (*c*).

The recent Copyright (Artistic) Bill, 1900, proposed that the term of copyright in sculpture as well as in paintings should be the life of the person to whom the same is given,

(*a*) *Britain* v. *Kennedy* (1903), 19 Times L. R. 122. (*b*) Sect. 5.
(*c*) Pars. 99, 100.

and thirty years next after his death. Sculptors have, however, under the present law an advantage over painters inasmuch as the copyright in a sculpture will remain after sale of the work in the sculptor, even if the work be a commissioned one, unless there is an express assignment of the copyright. The Bill referred to proposed to put sculptors on the same footing as painters in all respects.

CHAPTER III.

COPYRIGHT IN PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

The arts of painting and drawing.

Of all the branches of the fine arts this was the last recognised as worthy of protection by the legislature. On what ground it is difficult to comprehend. Where is the difference in principle between a picture and a poem?

The claims of the artist to a copyright in his works are quite as valid as those of the literary author in his; and if the principle were once admitted that a man should be protected in the enjoyment of his intellectual productions, and a certain period of exclusive possession allowed to the author for his benefit, before the public were in full and free enjoyment of the work, on what ground could Parliament so long withhold the same privilege from the artist as it had already granted to the author?

It is a strange anomaly that while the law gave a portion to that which was, in the ordinary way, the work of a man's hands, and allowed a copyright in inventions and designs, it should have afforded no protection to those productions which were more exclusively the creations of the mind. It was thought but an act of justice and right that a copyright should exist in literary productions, but when it was proposed, as late as 1862, to give a similar right in pictures, a cry was raised that it was derogatory on the part of jurisprudence to protect the works of those who contributed by their art to the honour of their country, the elevation of the national taste, and the amusement, instruction, and delight of the community at large.

With respect to the fine arts, two series of Acts had been passed, giving a copyright of a limited and special nature in sculptures and engravings: hence this unaccountable opposition to the bestowing a copyright in paintings appears the more extraordinary. For while an engraving enjoyed protection, the picture from which it was taken was without. A man might make any number of copies of the best work of

the artist—sell them, and there was no remedy. Not unfrequently these copies were sold as originals, and even the name of the original artist forged upon them, but the injured party was without redress.

The evil was almost peculiar in this country. In most European countries the principle of copyright extended through the whole range of the fine arts, and, unlike our law, especially protected the work of painters.

At the present day, if one purchases the copyright of a picture he holds the picture free from any interference, and with the perfect right of dealing with it as he pleases. If, however, he buys the picture simply as a picture, the copyright being reserved to the artist by some note in writing, he, the purchaser of the picture, will then have the gratification and delight resulting from its contemplation—he cannot make copies or engravings from it, or use it for a different purpose from that for which the artist sold it (*a*). The same rule applies to authors. When a person buys a book he can read it, but cannot multiply copies of it unless he purchases the copyright. This appears but fair, especially if we bear in mind that the greater part of the artist's remuneration probably arises from the reproduction of his work (*b*).

The existence of copyright in paintings is a protection also to the purchaser of a picture. It was formerly well known that after a person had purchased a picture the artist might have made a copy and multiplied it to any extent, although the purchaser might have been under the impression that he had bought a picture as being the single work of the artist. Of course such an action would not have become an honourable man, but still the right remained to the artist to act in such a manner had he thought proper. It is not a desirable thing to have a great work of art multiplied indefinitely, and hawked about for sale. It is well known that the frequent repetition of a work of art diminishes the worth of the original; indeed, nothing detracts so much from its commercial value.

At length the wished-for day arrived, and the artists succeeded in obtaining for their protection an Act of Parliament.

Creation of copyright in works of art.

The Act (25 & 26 Vict. c. 68) is entitled, "An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the commission of Fraud in the Production

(*a*) Of course the purchaser of the picture is not bound to lend it to the artist or any other person for the purpose of engraving, and this is only here mentioned as there seems to be some such extraordinary idea prevalent among engravers.

(*b*) The painting of 'The Roll Call,' by Miss Thompson, was sold for £100, the right of engraving fetched £1200, see *post*.

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and Sale of such works' (*a*). After reciting that by law as then established, the authors of paintings, drawings, and photographs had no copyrights in their works (*b*), it provides that the author (*c*), being a British subject or resident within the dominions of the Crown, of every original painting, drawing (*d*), and photograph which shall be or shall have been made, either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of the Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided that when any painting or drawing or the negative of any photograph shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof unless it be expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the vendee or assignee of such painting or drawing or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless at or before the time of such sale or disposition an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect.

Effect of section.

This remarkable section places artists in a most peculiar position in regard to copyright, and numerous cases of hardship have been known to arise through artists, architects, and others entertaining a mistaken impression as to the rights conferred on them by this Act. Artists must particularly bear in mind that, except where their work is executed upon commis-

(*a*) By the Short Titles Act, 1892, this Act may be cited as "The Fine Arts Copyright Act, 1862."

(*b*) But, semble, he had copyright at common law in his unpublished works. See *Prince Albert* v. *Strange* (1849), 1 M. & G. 25, 46; *Turner* v. *Robinson* (1860), 10 Ir. Ch. Rep. 121.

(*c*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99.

(*d*) An architectural design is protected under this word: but otherwise the English copyright law affords no protection to architects.

sion, the copyright is absolutely lost if at the time of the first sale a disposition of their work there is no agreement as to whom the copyright shall belong. A struggling artist is perhaps reluctant to frighten a possible purchaser of his work by suggesting a reservation of copyright, yet, unless he obtains such a reservation in writing, the copyright cannot belong to him, nor has he the satisfaction of feeling that at any rate the copyright will belong to the purchaser, who in a generous mood may re-assign it to him; for if the purchaser does not, at the time of first sale or disposition, take an assignment in writing of the copyright, it cannot belong to him. The work has fallen into the public domain, and any one may copy it unless he can be restrained on the ground of breach of faith!

The only case in which the statute seems to take a sensible view (and this is rather done by implication than otherwise) is where the work is executed on commission, in which case the copyright vests, without any agreement, in the party for whom the work is executed (*a*).

The Royal Commissioners in their report on copyright were of opinion that it was clearly undesirable that copyrights which were in many cases of great value should in this way be left to piracy, and thought that the law, therefore, should strictly define to whom, in the absence of an agreement, the copyright should belong. They also referred to the expediency of making a distinction between pictures painted on commission and others, but they experienced a difficulty in defining what a commission was, and looking to the evidence before them on the point, they arrived at the conclusion that no distinction could practically be made. The majority of the Commissioners came to the conclusion that, in the absence of a written agreement to the contrary, the copyright in the picture should belong to the purchaser or the person for whom it was painted and follow the ownership of the picture (*b*).

What is a sale?

It is not always easy to decide whether there has been a sale or disposition of the picture.

A case on this point is *Levi* v. *Champion & Co., Limited* (*c*). The plaintiff, Mr. Levi, was a chromo-lithographer, and the defendants the well-known mustard and vinegar manufacturers. The plaintiff was one evening instructing himself by reading

(*a*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

(*b*) In the Copyright (Artistic) Bill, 1900, it was proposed to provide that the copyright should remain in the artist, except in the case of portraits; but the artist was not to be entitled to make replicas without the consent in writing of the owner of the picture. Under the present law, the copyright in a sculpture remains in the sculptor, unless there is an express assignment.

(*c*) (1887), 3 T. L. R. 286.

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'Midsummer Night's Dream,' when he came across the well-known passage, "Good Master Mustard-seed, I know your patience well: that same cowardly giant-like ox-beef, hath devoured many a gentleman of your house; I promise me your kindred hath made my eyes water ere now. I desire your more acquaintance, good Master Mustard-seed" (*a*) On reading these lines it occurred to him that the words, accompanied by a suitable illustration, would form a good label or trade-mark for a firm of merchants in or manufacturers of mustard. He accordingly had prepared by his artist an oil painting on millboard of a weird moonlight scene, in which a sprite was pictured presenting a tin of something, presumably mustard, to Bottom and to Titania, who were seated on a green bank, with Puck hovering over their heads. In the lower part of the picture was a label containing the above Shakesperian lines and the word 'Mustard.' This picture was in 1879 shown to a person in Messrs. Champion & Co.'s employment by the plaintiff's traveller, and Messrs. Champion & Co. ordered 250,000 reduced coloured copies as labels for their mustard tins, and the name 'Champion' affixed to the picture, which were duly supplied. The picture itself remained for some time in the possession of the defendants. A second issue of the labels was printed by the plaintiff for the defendants in 1883 at a reduced charge. Subsequently the defendants employed other people to print similar labels, and the plaintiff (having registered the copyright in the picture under the Act of 1862 in 1879) brought his action, alleging that by issuing the labels which were not printed by the plaintiff the defendants had infringed his copyright. Mr. Justice Kekewich came to the conclusion, on the evidence, that the agent for Messrs. Champion did mean to buy the picture, and that the plaintiff's traveller did intend to sell it. Then and there, when the order was given, the property in the picture passed to Messrs. Champion, Levi being intrusted with the task of printing a number of copies, without any reservation of a right on his part to print future issues of the label. His lordship held that there was a contract for sale of the picture, and that the property passed to Messrs. Champion: that section 1 of the Act was applicable, and that a person so selling was not entitled to the copyright. Messrs. Champion did not claim the copyright in the picture, but Levi had not got it—that was to say, he had not got the sole or exclusive right; and therefore could not prevent Messrs. Champion or other persons from multiplying copies.

(*a*) Act iii. sc. 1.

The Act of 1862 confers copyright upon a painter, drawer, or photographer for the term of his natural life and seven years after his death, but it does not expressly state when the statutory copyright is to commence and the common law right to protection cease. In the case of *Tuck* v. *Priester*, Lord Esher, M.R., expressed the opinion that, no time being mentioned, statutory copyright begins from the making of the work (*a*), and whatever difficulties may attend such a construction, there seems no escaping from it. The alternative suggestion is that statutory copyright commences on publication, but the statute lends no support to this view.

When copyright commences.

The difficulties of section 1 of the Act seem to have mainly arisen from the attempt to legislate in one section for such different artistic works as a painter's masterpiece and a photograph. In the case of a photograph there is no difficulty in determining the time when and place where the negative was made, but it may be more difficult in the case of a picture. Yet the section confers copyright on a foreigner "resident within the dominions of the Crown." If it be correct that the statutory copyright commences on the making of the work, then the residence within the dominions of the Crown must no doubt be at the "making" of the work, and his residence at the time of publication is immaterial. The length of the author's residence is probably immaterial (*b*), so long as he is resident at the time of making, but this might extend over a considerable period.

It seems probable, then, that the common law copyright in a painting, drawing, or photograph before publication is merged in the statutory copyright, so that, even before publication, an artist who has not registered his work cannot sue in respect of infringements, unless these have been committed in breach of faith (*c*). The point is, however, not free from doubt.

Application to foreigners.

A British artist "making" his work either in the British dominions or elsewhere is entitled to copyright; and a foreign or colonial artist "making" his work during a residence in the British dominions is also entitled to copyright under the Act of 1862. But a foreigner "making" his work outside the British dominions is not entitled to copyright, except under the International Copyright Acts, nor does a British subject commissioning a foreigner to paint a picture for him obtain copyright by virtue of the clause in section 1 relating to

(*a*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629, 636.

(*b*) Cf. *Low* v. *Ward* (1868), L. R. 6 Eq. 415: and see *ante* p. 92. as to literary copyright.

(*c*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

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commissioned works, unless the work is "made" within British dominions (*a*).

Copyright does not extend to the colonies.

It has recently been decided that a British artist cannot sue under the Act of 1862 for infringements of his artistic copyright committed in Canada (*b*). The Act confers on British subjects and persons resident in British dominions copyright in pictures, drawings, and photographs. Such copyright extends to the whole of the United Kingdom, but there is nothing in this Act, as there is in the Literary Copyright Act, to indicate any intention on the part of the Legislature to extend the limits within which the copyright is to be enjoyed to any part of the British dominions outside the United Kingdom. There are clauses, especially section 4, relating to registration, and section 10, prohibiting importation, which negative any such intention. The Judicial Committee of the Privy Council were therefore of opinion, in the case referred to, that, in the absence of language clearly showing an intention to confer copyright in such dominions, the contention of the plaintiff that he could sue in Canada for infringement of his copyright could not be supported.

This decision clearly is applicable to the other colonies and dependencies of the United Kingdom, and the result is that those who desire copyright in Canada, or any other colony, must obtain such copyright by complying with the laws of the colony.

Who is the author?

Where a person employs another to execute for him an artistic work, the employer may be the proprietor of the copyright, but is not necessarily the author within the meaning of the Act.

Thus where the plaintiffs were a firm of printers, J., a member of the firm, conceived the idea of printing and publishing cards, bearing a representation of a hand holding a pencil in the act of completing a cross within a square, with a view to such cards being used at parliamentary and other elections for the guidance and instruction of illiterate voters in the marking of their ballot papers. J., being unable to draw, employed an artist in the service of the firm to make under his direction a drawing of the representation above described. The plaintiffs registered the drawing under the Act of 1862, and in the memorandum stated J. to be the author of the drawing. The Court, however, held that J. was not the author of the drawing, and that the registration was consequently void (*c*).

Mr. Justice Wills in the case last cited said: "I do not see

(*a*) *Geissendorfer* v. *Mendelssohn* (1896), 13 Times L. R. 91.
(*b*) *Graves & Co.* v. *Gorrie* (1903), A. C. 496.
(*c*) *Kenrick & Co.* v. *Laurence & Co.* (1890), 25 Q. B. D. 99 : 38 W. R. 779.

how a gentleman who is incapable of drawing even such a very simple picture as a rough sketch of the human hand, and who did not in fact set pencil to paper in the matter, can be called the author of the drawing. He suggested the subject and made such limited suggestions as to the treatment as the subject admitted of; but it seems to me that in an Act which gives copyright to drawings the author must mean a person who has at least some substantial share in putting the touches on to paper" (*a*).

The copyright given by the first section is qualified by the following section, to the extent that nothing shall prejudice the right of any person to copy or use any work in which there is no such copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

This must refer to and include all works of ancient and deceased masters, and all paintings of living artists sold before the passing of this Act, or since, without the statutory provisions having been complied with for the creation and transfer of copyright.

Author of a photograph

There is ordinarily no difficulty in determining who is the author of a painting or drawing, but the question has several times come before the court as to who is the author of a photograph within the meaning of the Act. In *Nottage* v. *Jackson* (*b*), the explanation of the Master of the Rolls as to who was the author was this: "The nearest I can come to, is, that it is the person who effectively is as near as he can be the cause of the picture which is produced, that is, the person who has superintended the arrangement, who has actually formed the picture by putting the people into position, and arranging the place in which the people are to be"; and Lord Justice Cotton said: "In my opinion 'author' involves originating, making, producing as the inventive or master mind, the thing which is to be protected, whether it be a drawing, or a painting, or a photograph"; and Lord Justice Bowen said: "The true definition of 'author' for the purpose of the Act, keeping in mind that photography is to be treated for the purpose of the Act as if it were an art, is that the author is the man who really represents, or creates, or gives to the ideas, or fancy or imagination the local habitation—the man, in fact, who, in the words of the Master of the Rolls, is most nearly the effective cause of the representation" (*c*).

(*a*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99, 106.
(*b*) (1883), 11 Q. B. D. 627.
(*c*) And see *Wooderson* v. *Raphael Tuck & Sons* (1887), 4 T L. R. 57.

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The "author" of a photograph is, therefore, not necessarily the person who supplies the apparatus and pays the wages of the person who takes the negative. Thus, where A. and B., who carried on business in co-partnership, under the firm of the L. Company, sent one of the artists in the employ of the firm to take a photograph of the Australian cricketers at the Oval, it was held that A. and B. were wrongly registered in their individual names as the proprietors and authors of the photograph. According to the opinion expressed by the court, the person who took the negative was the author (*a*).

In the case of *Melville* v. *Mirror of Life Co.* (*b*), the plaintiff and his son were both present at the taking of a photograph of C. The son posed C. and performed all the manual acts, while the plaintiff stood by and looked on, and at the proper moment held up his hand so as to indicate to C. the direction in which he was to look. Mr. Justice Kekewich held that the plaintiff was the author of the photograph. "The father," he said, "being the principal photographer, the question is whether he is to be held to be the 'author' of this photograph? The evidence is somewhat conflicting; but my conclusion is that the son assisted the father—that whatever the son did was merely as assistant of the father; he was throughout the agent, and not the principal; the father was the principal throughout. Whether the son arranged the furniture, posed the subject, went to the dark room for the plate and put it into the camera, or eventually took off the cap, seem to me to be matters of detail. What I have to inquire into is the real relation of the father to the son in the matter. I have no doubt that the son, though according to his own view perfectly competent to do it all himself, did, as regards this particular portrait, act under the direction and as agent of his father. It seems to me that that makes the father the 'author' of the photograph directly within such definition as is to be found in *Nottage* v. *Jackson*, and takes the father outside the criticism of the Master of the Rolls and the Lords Justices in that case, which would go to show that an agent is not an author within section 1 of the Fine Arts Copyright Act, 1862, and that the principal cannot be the author unless he is the active principal. In that case, no doubt, the principal was the gentleman who sent some one to Kennington Oval to take the photographs of the Australian cricketers playing there, and the court did not see

(*a*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627; 52 L. J. Q. B. 760; 32 W. R. 106; 49 L. T. 339; *Burrow Giles* v. *Sarony*, 4 Davis' Rep. (Amer.) 53.
(*b*) (1895), 2 Ch. 531; 65 L. J. Ch. 41.

its way to saying that a gentleman sitting in his room in Regent Street could be the author of a photograph which was being taken at Kennington Oval. . . . I think the right conclusion is that the plaintiff was the 'author' of the photograph."

This decision does not tend to lessen the difficulty of discovering the author of a photograph, but the basis of the decision seems to be that the father was the proprietor of the business. If the positions had been reversed, and the father had done what the son did, it is conceived that the father would still have been the "author." In fact, the result of the two decisions in *Nottage* v. *Jackson* and *Melville* v. *Mirror of Life*, is conceived to be that the proprietor of the business will be considered the author of the photograph if he be present at the time of its being taken, and in any way superintend the operation, but that if he be not present, then the assistant who takes the photograph will be the author.

In whom the copyright in a photograph vests.

Though the photographer is the "author" he is not necessarily entitled to the copyright. Where a sitting is given to a photographer without payment, the copyright vests in the employer, and the sitter cannot restrain the sale of the photograph. Where, however, a sitter pays value to the photographer, the sitter is the person "for and on whose behalf" the photograph is "executed for valuable consideration," and the copyright, apart from any agreement to the contrary, vests in the sitter, who will be entitled to restrain the multiplication and sale of copies, and even to restrain the exhibition of copies in the photographer's studio (*a*), on the ground either of copyright or of breach of contract.

This subject was exhaustively dealt with by Mr. Justice North in the case of *Pollard* v. *Photographic Co.* (*b*). "The question," he said, "is whether a photographer who has been employed by a customer to take his or her portrait is justified in striking off copies of such photograph for his own use, and selling and disposing of them or publicly exhibiting them by way of advertisement or otherwise, without the authority of such customer, either express or implied. I say 'express or implied,' because a photographer is frequently allowed, on his own request, to take a photograph of a person under circumstances in which a subsequent sale by him must have been in

(*a*) *McCosh* v. *Crow* (1903), 5 Sc. Sess. Cas. (4th Ser.) 670; *Bolton* v. *London Exhibition* (1898), 13 T. L. R. 550; *Steddall* v. *Houghton* (1901), 18 T. L. R. 126.

(*b*) (1888), 40 Ch. D. 345; 58 L. J. Ch. 251; 60 L. T. 418; 37 W. R. 266; 5 T. L. R. 157; *Bolton* v. *Aldin* (1895), 65 L. J. Q. B. 120; *Ellis* v. *Ogden* (1894), 11 T. L. R. 50; *Ellis* v. *Marshall* (1895), 64 L. J. Q. B. 757; *Boucas* v. *Cooke* (1903), 2 K. B. 227.

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the contemplation of both parties, though not actually mentioned. To the question thus put, my answer is in the negative, that a photographer is not justified in so doing. Where a person obtains information in the course of a confidential employment, the law does not permit him to make any improper use of the information so obtained; and an injunction is granted, if necessary, to restrain such one; as, for instance, to restrain a clerk from disclosing his master's accounts, or an attorney from making known his client's affairs, learned in the course of such employment. Again, the law is clear that a breach of contract, whether express or implied, can be restrained by injunction, and, in my opinion, the case of the photographer comes within the principles upon which both these classes of cases depend. The object for which he is employed and paid is to supply his customer with the required number of printed photographs of a given subject. For this purpose the negative is taken by the photographer on glass; and from this negative copies can be printed in much larger numbers than are generally required by the customer. The customer who sits for a negative thus puts the power of reproducing the object in the hands of the photographer; and, in my opinion, the photographer who uses the negative to produce other copies for his own use, without authority, is abusing the power confidentially placed in his hands merely for the purpose of supplying the customer; and further, I hold that the bargain between the customer and the photographer includes, by implication, an agreement that the prints taken from the negative are to be appropriated to the use of the customer only.

"The principles upon which I rest my judgment are well known, and of familiar application."

Then after examining the cases of *Murray* v. *Heath* (*a*), *Tuck* v. *Priester* (*b*), and remarking that the phrase "gross breach of faith" used by Lord Justice Lindley in the latter case applied with equal force to the present, when a lady's feelings were shocked by finding that the photographer she had employed to take her likeness for her own use was publicly exhibiting and selling copies thereof, the learned Judge continued:

"It may be said, that the cases to which I have referred are all cases in which there was some right of property infringed, based upon the recognition by the law of protection being due for the products of a man's own skill or mental labour; whereas, in the present case the person photographed has done nothing to merit such protection, which is meant to prevent legal

(*a*) (1831), 1 B. & Ad. 804.

(*b*) (1887), 19 Q. B. D. 629.

wrongs, and not mere sentimental grievances. But a person whose photograph is taken by a photographer is not thus deserted by the law; for the Act of 25 & 26 Vict. c. 68, s. 1, provides that when the negative of any photograph is made or executed for or on behalf of another person for a good or valuable consideration, the person making or executing the same shall not retain the copyright thereof, unless it is expressly reserved to him by agreement in writing, signed by the person for or on whose behalf the same is so made or executed; but the copyright shall belong to the person for or on whose behalf the same shall have been made or executed."

Sitter may have copyright though not owner of negative.

In the case of *Melville* v. *Mirror of Life* (*a*), Kekewich, J., was of opinion that the sitter could not obtain copyright in the photograph unless he were the purchaser of the negative. "A man cannot," he said, "be said to make a photograph for or on behalf of another when that other is not entitled to have the negative of the photograph when made. My conclusion, therefore, is that, though the photograph was of [the sitter], yet, as the negative was not made or executed for or on behalf of him, the proviso has no application to the present case."

Boucas v. *Cooke*.

With this expression of opinion, however, the Court of Appeal in the recent case of *Boucas* v. *Cooke* (*b*) were not prepared to agree.

The plaintiff carried on business as a photographer, and the defendant was a youth known as the "boy preacher." The defendant came to the plaintiff's studio saying that he wanted his photograph taken, which must be of a particular kind, as it was required for a block in order to make a reproduction of the photograph for distribution at meetings where the defendant was preaching. Nothing was said as to payment. The plaintiff then took two negatives for the photograph, and on the following day sent a silver print of one of the negatives, by the directions of the defendant, to a printer who was to make a block for the purpose of reproducing it. The photograph was approved by the defendant, who gave an order for twenty-four copies, eighteen of which were subsequently delivered, and though no payment had been made for these copies, the plaintiff admitted in cross-examination that he expected to be paid for them. Before the delivery of these copies the defendant asked the plaintiff to quote a price for a large number of the photographs, but terms were never agreed, and the plaintiff never got the order. The photograph was

(*a*) (1895), 2 Ch. 531.
(*b*) (1903), 2 K. B. 227; 72 L. J. K. B. 741; 88 L. T. 760; 52 W. R. 99.

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eventually re-produced, and copies sold by the defendant at his mission-hall, whereupon the plaintiff issued his writ claiming damages for alleged infringement of his copyright, an injunction and penalties. At the trial before Ridley, J., the jury found that the negative was the property of the plaintiff, and judgment was entered for the plaintiff. Upon appeal, the Court of Appeal directed that this judgment should be discharged and judgment entered for the defendant, being of opinion that the circumstances were such as to raise an implied promise on the defendant's part to pay for the photographs, that they were therefore "made or executed for or on behalf of any other person for a good or a valuable consideration" within the meaning of section 1 of the Fine Arts Copyright Act, 1862, and that the copyright was in the defendant, notwithstanding that the property in the negative might remain in the plaintiff. "It is contended on behalf of the plaintiff," said the Master of the Rolls, "that the only matter dealt with by section 1 is the sale or disposition of the negative, and that the other clause is pleonastic—that is, that it is only another way of speaking of the sale or disposition of the negative. That is the view taken by the learned judge below, who in effect directed the jury that the one test of the right to the copyright was whether the customer had bought the negative; and that if the negative had been sold or disposed of, the author had no copyright, but the person to whom it was sold would have it. It is said that the evidence shows that in this case the negative was not bought, and that, therefore, the copyright remained in the author, and the plaintiff can sue any person who multiplies copies of the photograph. But that view is, in my judgment, contrary to the express words of the section, and altogether ignores the second alternative, which *primâ facie* takes the copyright out of the maker of the photograph, and it substitutes for the alternative given by the section a mere purchase of the negative; in other words, it ignores the distinction between the purchaser of the negative and the person for or on whose behalf for a good or valuable consideration the photograph is made. That the statute regarded the latter as different from a mere vendee or assignee is clear from the following words, which deal with the vendee or assignee as different from the other person, and impose conditions on them which they do not impose on him; a clear distinction is thus drawn between the purchaser of the negative and the person for or on whose behalf the photograph is taken for a good or valuable consideration."

If, therefore, a photographer solicit a celebrity to have his photograph taken without making any charge for the actual taking of the photograph, the right of multiplication of copies of the photograph *primâ facie* belongs to the photographer even though the sitter subsequently purchases some copies (*a*). But, if a person comes to a studio and asks the photographer to take his photograph, this generally implies a contract to pay for the sitting, and *primâ facie* the copyright will vest in the sitter (*b*).

Assignment and registration.

All formalities, such as are required under the Engraving or the Sculpture Copyright Acts, are unnecessary in the assignment and transfer under this Act. Copyright is declared to be personal property, and capable of being assigned by any note or memorandum in writing, signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

Where S., the proprietor of a periodical called 'Good Words,' agreed verbally with G. to purchase the right to engrave certain photographs to illustrate 'Good Words,' G. reserving the right to use them in any other publication, and subsequently signed a receipt for "the use of photographs in 'Good Words' reserving all rights to issue the same in any other publication," and afterwards S. commenced publishing in a separate volume these articles, illustrated by engravings from the same photographs, and G. brought an action under the 25 & 26 Vict. c. 68, for damages and for a writ of injunction; and S. filed a bill for a declaration that under the verbal agreement he was entitled to republish the engravings taken from G.'s photographs, for specific performance of an alleged verbal agreement to grant a licence to use the photographs for the purpose of engraving and publishing in 'Good Words,' or in any republication of the articles which they illustrated, and that the action at law might be restrained; Vice-Chancellor Malins held, that the verbal agreement extended to the use of the photographs in 'Good Words' only, that there was no part performance by G. of a contract or licence by G. to publish in a separate form, and that S. had no equity, inasmuch as by the 25 & 26 Vict. c. 68, s. 3, every leave or licence for the publication of photographs must be in writing, and dismissed the bill with costs (*c*).

Assignment of the copyright when

And an assignment in terms of the copyright in a picture

(*a*) *Ellis* v. *Ogden* (1894), 11 Times L. R. 50; *Ellis* v. *Marshall* (1895), 64 L. J. Q. B. 757; 11 T. L. R. 91; *Melville* v. *Mirror of Life* (1895), 2 Ch. 531.

(*b*) *Bowens* v. *Cooke* (1903), 2 K. B. 227; *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345.

(*c*) *Strahan* v. *Graham* (1867), 16 L. T. 87; (1868), 17 L. T. 457; 15 W. R. 487.

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limited in effect.

may be qualified by the obvious intention of the parties to a licence to copy it, or to an assignment for the limited purpose of producing an engraving or photograph.

Thus in a recent case (*a*), an action was brought to restrain an alleged infringement by the defendant of the plaintiff's copyright in an oil painting called 'Going to Work,' and in an engraving made from it. The picture was painted by the artist for a Mr. Halford, who, on the 9th November, 1870, wrote the following memorandum addressed to the plaintiff: "I assign to you for the purpose of producing an engraving of one size, the copyright of the picture painted by Mr. Eddis, entitled 'Going to Work,' and being a portrait of my daughter." The picture represented a little girl in a sea-side costume with bare feet walking on the sea-shore, carrying in one hand a spade over her shoulder, and in the other hand a bucket. The plaintiff, on the 12th November, 1870, registered himself under the 25 & 26 Vict. c. 68, as the proprietor of the copyright of the picture, and in July 1871, he published an engraving of the picture, his name being engraved on the plate as the proprietor.

In 1879 the defendant published a chromo-lithograph which the plaintiff alleged to be an infringement of his copyright. This picture was called 'Holiday Time,' and it also represented a girl on the sea-shore, with bare feet, with a spade in one hand over her shoulder, and a bucket in the other hand. But her dress was different from that of the girl in the picture, and she was standing still instead of walking. The evidence showed that the chromo-lithograph was derived from a photograph published in New York, and that neither the defendant nor the artist whom he employed to produce the chromo-lithograph had, before its production, seen either the picture or the engraving. There was no evidence to show how the photograph was produced, or whether the photographer had, before he produced it, seen either the picture or the engraving. The photograph was evidently taken from life.

Mr. Justice Fry held that the letter of the 9th November, 1870, amounted only to an assignment of the copyright of the picture or a licence to copy it, for the limited purpose of producing an engraving of one size, and that the right of producing copies in other ways and of other sizes remained in Halford, and could be assigned by him to any one else. And by section 11 of the 5 & 6 Vict. c. 45, the registration gave only a

(*a*) *Lucas* v. *Cooke* (1880), 13 Ch. Div. 872; *Tuck* v. *Canton* (1882), 51 L. J. Q. B. 363.

primâ facie title which could be rebutted, and here the assignment itself rebutted the *primâ facie* title. The result was that the plaintiff was only the proprietor of the engraving. It was very possible that the photograph might have been in substance copied from either the picture or the engraving, but there was no evidence on which the court was entitled to assume that it was copied from either. But, even if it was copied from one or the other, it might have been copied from the picture, in which the plaintiff had no right, just as well as from the engraving, and the court could not assume without evidence that it was copied from the latter. Before the plaintiff could succeed, he must show that the photograph had been taken from the engraving, and this he had not done.

Licences.

It has been decided (*a*) that a licence not amounting to an assignment of the whole copyright need not be registered. The document which was said to amount to a licence ran thus: "The sole right to reproduce the picture in chromos or in any other form of colour painting to be vested in you for the term of two years," and on certain other conditions absolutely. It is questionable, however, whether this was not an assignment of part of the copyright; and an assignee must be registered before he can sue for infringement (*b*). If a recent decision be correct, a licensee runs a risk of losing the benefit of his licence by reason of the licensor subsequently assigning the entire copyright to a third person without notice of the licence. In the case referred to, the painter of a picture, after giving a licence to A. to publish it in monochrome, assigned the entire copyright to B. without notice of the licence, and then A., without notice of the assignment, published in monochrome, and it was held by Mr. Justice Vaughan Williams that B. could sue A. for infringement (*c*). With deference, however, the decision seems questionable.

Sale of blocks.

If the proprietor of the copyright in a picture supplies to a customer blocks for printing copies of the picture, this does not amount to any assignment of the copyright, but, apparently, confers a personal licence upon the customer to print from the blocks and to use the copies for the purposes for which the blocks were ordered. Thus, where the plaintiffs'

(*a*) *Tuck* v. *Canton* (1882), 51 L. J. Q. B. 363. See *London Printing and Publishing Alliance, Limited* v. *Cox*, [1891] 3 Ch. 291; 60 L. J. Ch. 707; 65 L. T. 60; 7 T. L. R. 738.

(*b*) *Liverpool General Brokers' Association* v. *Commercial Press* (1897), 2 Q. B. 1, not following diction of Cockburn, C.J., to the contrary in *Wood* v. *Boosey* (1867), L. R. 2 Q. B. 340.

(*c*) *London Printing Alliance* v. *Cox* (1891), 3 Ch. 291.

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business was to supply drawings to persons in the carriage trade for advertising purposes, and for such purposes they sold electro blocks to L. without any written agreement or licence, it was held that L. could not authorise a third party to print from the blocks and publish the drawings (*a*).

Register.

By the 4th section it is declared that a book of registry shall be kept at Stationers' Hall, entitled 'The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs,' in which shall be entered a memorandum of every copyright to which any person shall be entitled under this Act (*b*), and also of every subsequent assignment; and that such memorandum shall contain (1) a statement of the date of the agreement or assignment, and (2) of the name and place of abode of the person in whom such copyright shall be vested, and (3) of the author of the work, together with (4) a short description of the subject of the work; and, if the person registering shall so desire, (5) a sketch, outline, or photograph of the work.

It has been doubted whether in this memorandum of registration "abode" is sufficiently described by giving the place of business (*c*).

Who to be registered.

Registration may be in the name of a trustee for the proprietor (*d*), but a mere agent or nominee is not such a trustee. Accordingly where the copyright in a picture which belonged to a limited company was registered in the sole name of their managing director, and it was not shown that he was a trustee of the copyright for them, it was held that he was wrongly on the register, and that joinder of the company with him as co-plaintiffs did not render an action for infringement maintainable (*e*).

Description of work.

It is not a valid objection that the registration does not give such a description of the work as may enable a person from it alone to ascertain whether he is about to sell the copy of a registered work, for that knowledge may be gained from other sources, and the object of the legislature, as pointed out by the statute, is that there shall be such a description of the picture as to enable a person who has it before him to

(*a*) *Cooper* v. *Stephens* (1895), 1 Ch. 567; 72 L. T. 390; followed, *Marshall* v. *Ball* (1901), 85 L. T. 77; as to engraving blocks, see sect. 1 of Engraving Copyright Act, 1734.

(*b*) See *London Printing and Publishing Alliance, Limited* v. *Cox* [1891], 3 Ch. 291; 60 L. J. Ch. 707; 65 L. T. 60; 7 T. L. R. 738.

(*c*) *Per* Field, J., in *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627; 52 L. J. Q. B. 769; 32 W. R. 106; 49 L. T. 339. The judgment of Field, J., is given in the Law Journal and Law Times Reports.

(*d*) *London Printing Alliance* v. *Cox*, *supra*.

(*e*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

judge whether or not the registration applies to the one he is about to copy. This was decided in 1868. Mr. Henry Graves, being the proprietor of the copyright in two paintings in oil and in a photograph, entered them under this section, thus: "Painting in oil, 'Ordered on Foreign Service'; painting in oil, 'My First Sermon'; photograph, 'My Second Sermon.'" The first picture represented an officer taking leave of a lady; the second, a young child sitting in a pew, apparently listening with her eyes wide open; the photograph represented the same child asleep in a pew; and it was considered that the nature and subject of the works were sufficiently described under this section. "If we consider it as a question of fact," observed Mr. Justice Blackburn, "there can be no reasonable doubt that the description of each of the pictures is sufficient. The picture, 'Ordered on Foreign Service,' represents an officer who is ordered abroad, taking leave of a lady, and no one can doubt that is the picture intended. So again 'My First Sermon' describes with sufficient exactness a child, impressed with the novelty of her situation, sitting in a pew, and listening with her eyes open; while the same child, fast asleep in a pew, forms the subject of 'My Second Sermon.' Who can doubt that in each of these cases the description is sufficient? There may be a few instances in which the mere registration of the name of the picture is not sufficient; for instance, Sir E. Landseer's picture of a Newfoundland dog might possibly be insufficiently registered under the description of 'A distinguished Member of the Humane Society.' Similarly, the well-known picture called 'A Piper and a Pair of Nutcrackers,' representing a bullfinch and a pair of squirrels, might not be accurately pointed out by its name. In either of those cases the names would scarcely be sufficient, and it would be advisable for a person proposing to register them to add a sketch or outline of the work. But when the subject is indicated, as it is here, it seems to be merely a question of fact whether the description affords enough information, and I cannot doubt that it does" (*a*).

What to be entered on register.

A memorandum of every copyright and of subsequent assignments is to be entered in the register, but it is not necessary that any agreement in writing should be made or entered on the register where registration is in the name of the person for or on behalf of whom a drawing is made or executed for a good or valuable consideration (*b*).

(*a*) *Ex parte Beal* (1868), Law Rep. 3 Q. B. 387; 37 L. J. (Q.B.) 161; S. C. 18 L. T. 285.

(*b*) *Petty* v. *Taylor* (1897), 1 Ch. 465.

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It must be remembered that if pictures are used to illustrate books, registration of the books under the Literary Copyright Act, 1842, will be sufficient to protect the illustrations (*a*), unless the copyright in the letter-press and in the illustrations is in different persons, when registration must be effected under both that Act and the Copyright (Fine Arts) Act (*b*).

Benefit of Act cannot be claimed until after registration.

It is further enacted by the 4th section that no proprietor of any copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

In a recent case, Lopes, L.J., expressed an opinion that by this section the proprietor of the copyright was with regard to the right to recover damages and penalties placed until registration in the same position as if he had no copyright; and that the making of the copies before registration and the sale of these copies after registration were so connected together that the proprietor of the copyright could not recover either damages or penalties in respect of the sale. Lord Esher, M.R., and Lindley, L.J., however, were of opinion that though by reason of the section the proprietor of the copyright could not recover damages for the making of the unauthorized copies before the registration, they were entitled to damages for the sale of these copies after the registration, but that the proprietor of the copyright could not recover *penalties* in respect of the sale of such copies after registration (*c*).

In the case referred to the plaintiffs were art publishers, and were assignees of the copyright in a water-colour drawing entitled 'Sounding the Charge.' In January 1884, the plaintiffs employed the defendant, who was a printer carrying on business in Berlin, to produce 2000 copies of the drawing. The defendant executed the order, but also produced a number of copies on his own account without the knowledge of the plaintiffs, and some of the copies so produced were imported into England afterwards. On January 21, 1886, the plaintiffs registered their copyright in the drawing. After such registration the defendant sold copies in England, and the plaintiffs then commenced an action claiming penalties under sect. 6 and damages under sect. 11 of the Copyright Act, 1862. It

(*a*) *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369; *Comyns* v. *Hyde* (1895), W. N. 9; 43 W. R. 266; *Marshall* v. *Ball* (1901), 85 L. T. 77.

(*b*) *Petty* v. *Taylor*, *ubi sup.*

(*c*) *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 48, 629; 57 L. T. 110; 19 Q. B. D. 629; 56 L. J. Q. B. 553; 36 W. R. 93 (C.A.); S. C. *Tuck & Sons* v. *The Continental Printing Co.* (1887), 3 T. L. R. 150, 661, 826; *Troitzch* v. *Rees*, W. N. (1887), 150; 3 T. L. R. 773.

was held that the statute gave no remedy for infringement of common law right, and by sect. 4 the plaintiffs were not entitled to recover in respect of anything done before registration, and that the sale after registration of copies made and imported before registration was not unlawful so as to give a right of action. In the court of first instance, Mr. Justice Day held that the case did not come within the words "knowing that any such repetition, copy, or other imitation has been unlawfully made" in sect. 6, and from this there was an appeal to the Divisional Court.

On this appeal the view of Mr. Justice Day was confirmed by Mr. Justice Grove and Mr. Justice Denman, but upon appeal to the Court of Appeal that court reversed the decision of the Divisional Court, the Master of the Rolls in delivering judgment, saying: "The question was whether a person might sell after registration copies made before registration. The proprietor of the copyright could not sue in respect of the making of copies before registration. But he could sue for the sale of the copies so made, as copyright existed at the time when the copies were made (*sic*). The word 'unlawful' meant without the consent of the proprietor. Therefore every proprietor of a work which was pirated before registration could bring an action for a sale or other wrong committed after registration. Accordingly both under the general law and under the statute the plaintiffs were entitled to an injunction and the damages. As to whether the plaintiffs were entitled to penalties different considerations arose."

Proprietor can sue for breach of faith without registration.

In this case the Court of Appeal also held that there was an implied contract that the defendant should not make any copies of the drawing other than those ordered by the plaintiffs, and that, independently of the statute, the plaintiffs were entitled to an injunction and damages by reason of the defendant's breach of contract.

Similarly, a person who has his photograph taken, and pays for the sitting, can sue the photographer for improperly multiplying copies of the photograph as an infringement of his copyright if he has registered, but, even without registration, he can sue for breach of the implied contract that the photographer will not sell or exhibit copies without the sitter's consent (*a*).

All assignments need not be registered.

The 4th section, though it prevents an assignee from suing for penalties, before the assignment to him has been regis-

(*a*) *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345; 58 L. J. Ch. 251.

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tered (*a*), does not render it necessary that all or any previous assignment should also be registered, or that the copyright of the original author should be registered (*b*). Registration of the proprietorship of the copyright is only *primâ facie* evidence of title, and may be rebutted by the terms of the assignment of the copyright to the person who has made the registration (*c*).

The enactments of the 5 & 6 Vict. c. 45, in relation to the registry thereby prescribed, are applicable to the registry under the 25 & 26 Vict. c. 68, except that the forms of entry prescribed by the earlier Act may be varied under the latter to meet the circumstances of any case (*d*). Consequently, the making of false and fraudulent entries of proprietorship of copyright for any purpose, either to acquire property in such copyright or to improperly restrain the publication or copying of works in which no copyright lawfully exists, is a misdemeanor. And the person aggrieved may apply to the court or a judge to obtain an order for the cancellation or substitution of names so inserted (*e*).

Rectification of register.

A person who has been convicted of infringing the copyright in certain paintings and photographs of the registered proprietor, but who sets up no title in himself or adduces no evidence to rebut the *primâ facie* evidence of proprietorship afforded by the book of registry, is not a person "aggrieved" within the meaning of this or the 14th section of the 5 & 6 Vict. c. 45.

"A person," said Hannen, J. (*f*), "to be 'aggrieved' within the meaning of the statute must show that the entry is inconsistent with some right that he sets up in himself or in some other person, or that the entry would really interfere with

(*a*) *Dupuy* v. *Dilkes*, W. N. (1879), 145; 48 L. J. Ch. 682. 'The Young Cricketer'; *Liverpool General Brokers* v. *Commercial Press* (1897), 2 Q. B. 1.

(*b*) *Re Walker & Graves* (1869), 20 L. T. Q. B. 877; L. R. 4 Q. B. 715; *Troitzch* v. *Rees*, W. N. (1887), 150; 3 T. L. R. 773.

(*c*) *Lucas* v. *Cooke* (1880), 13 Ch. Div. 872. 'Going to Work.'

(*d*) The Royal Commissioners in their report on Copyright, in 1878, recommended that registration of paintings and drawings should not be insisted on as long as the property in the picture and the copyright were vested in the same person, but that if the copyright were separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show—

(a) The date of the agreement.
(b) The names of the parties thereto.
(c) The names and places of abode of the artist, and of the person in whom the copyright is vested.
(d) A short description of the nature and subject of the work, and, if the person registering so desires, a sketch, outline, or photograph of the work in addition thereto.

As to engravings, prints, and photographs, however, they thought registration should be compulsory.

(*e*) *Chappell* v. *Purday* (1845), 12 M. & W. 303.

(*f*) *Graves's Case* (1869), L. R. 4 Q. B. 724: 20 L. T. 877.

some intended action on the part of the person making the application."

"It seems," said Blackburn, J., in the same case, "that to make a person aggrieved within the meaning of the statute, the applicant must have some substantial objection, and one going to the merits of the registered proprietor's title; then the court may direct an issue, or have the question otherwise disposed of, or, if they think this the proper course, may set aside or expunge the entry. But I do not think it is enough to entitle a person to say that he is aggrieved, and that the entry ought to be expunged, that, although the registered proprietor has a complete title in equity and in good sense, yet there is some slip either in the signing of the memorandum or in the spelling of a name; this would be my view if it were necessary to decide this question."

Expunging entry in register.

An application under the 14th section was made to the High Court of Justice, Queen's Bench Division, in February 1876, for an order to expunge from the register the entry of the copyright of the well-known picture called 'The Roll Call,' painted by Miss Elizabeth Thompson, who, by an agreement dated the 11th of May, 1874, had sold the copyright to Messrs. Dickinson and Co. for the sum of £1200. It appeared that the copyright was not, in fact, vested in Miss Thompson, and she had no right to assign it. She had painted the picture on commission for a gentleman named Galloway, who had paid her £100 in advance. There was no contest as to the ownership of the copyright; it was conceded that Mr. Galloway held it. He had parted with the picture to the Queen for the same price he himself had paid for it, but as this did not carry the copyright, it still remained in Mr. Galloway. Mr. Galloway did not oppose the application, and an order to expunge the entries so as not to affect the rights to the copyright was made.

There is no appeal to a Divisional Court from an order expunging an entry made by a Vacation Judge sitting as a Divisional Court (*a*), and probably no appeal at all.

Infringement of the right.

Invasion of the property is guarded against by the 6th section, which provides that if the author, after having sold or disposed of the copyright, or if any other person not being the proprietor for the time being of the copyright, shall (1) repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or (2) cause or procure to be repeated, copied, imitated, or otherwise multiplied for sale, hire,

(*a*) *In the matter of* 'The Young Duchess' (1892), 8 T. L. R. 41.

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exhibition, or distribution, any such work or the design thereof, or (3) knowing that any such repetition (*a*), copy or other imitation has been unlawfully made, shall import into the United Kingdom, or (4) sell, publish, let to hire, exhibit or distribute, or offer for sale, hire, exhibition, or distribution, or (5) cause or procure to be imported, sold, published, let to hire, distributed or offered for sale, hire, exhibition, or distribution any repetition, copy, or imitation of the said work, or of the design thereof, such person, for every such offence, shall forfeit to the proprietor of the copyright for the time being a sum not exceeding £10: and all such repetitions, copies, and imitations, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Under this clause, where the subject of a picture is copied, it is of no consequence whether that is done directly from the picture itself or through intervening copies; if, in result, that which is produced be an imitation of the picture, then it is immaterial whether that be arrived at directly or by intermediate steps. A copy, therefore, from an intervening copy is a copy from the original work, and within the prohibitory clauses of the statute (*b*). Nor does the copying refer merely to the imitation of a painting by a painting, or drawing by a drawing, or a photograph by a photograph, so that a photograph of a drawing, or a drawing of a painting, protected by the Act, would be a piracy. For, on inspecting the 1st section, which is the key to the whole Act, it gives to the author of every original painting, drawing, or photograph the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size; and the terms used are so extensive that it is plain that a photograph of a painting, of a drawing, or of another photograph made without the consent of the owner, though of a different size, provided it be a reproduction of the design, is an infringement such as would subject the maker to the penalty.

Copy of part.

Thus where a man had a drawing of his wife made, having attached to her arm and dress a dress-holder, a patented invention of his own, and substituted for his wife's head that of the Princess of Wales, taken from a photograph, the copyright in which belonged to the plaintiff, and from the

(*a*) *Actus non facit reum, nisi mens sit rea* (*Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton* (1859), 28 L. J. (M.C.) 216); as to the licence required to copy photographs, see *Strahan* v. *Graham* (1867), 16 L. T. 87; 17 L. T. 457.

(*b*) *Ex parte Beal* (1868), L. R. 3 Q. B. 387.

combination so obtained made and printed cabinet-size photographs for the purpose of advertising his invention, that was held to be an infringement (*a*).

In another case, the plaintiff was the owner of the copyright in a picture and engraving known as 'Can't you talk?' which represented a collie dog seated on his haunches on a stone floor looking down at the upturned face of a child; there was a wall in the background with a door on one side through which a cat was looking; above the dog was a table on which was a tub with a spoon in it. The defendants were the owners of a periodical in which was a wood-cut that almost exactly reproduced the whole of the plaintiff's engraving, with the exception of the child, whose position was replaced by a tortoise and two cats. The wood-cut was given as an illustration of a story entitled 'A Strange Visitor.' It was held that, as the defendants had taken a substantial portion of the plaintiff's engraving and reproduced it in the wood-cut with slightly different surroundings, this constituted an infringement of the plaintiff's copyright, and that the latter was accordingly entitled to an injunction (*b*).

Before the existence of statutory copyright in paintings, it was held by the Irish Chancery Court, that the owner's common law rights in a painting were not prejudiced by his public exhibition of it. The case referred to is *Turner* v. *Robinson* (*c*). The defendant was charged with piracy in having made for sale copies of a painting representing the death of Chatterton. He denied direct copying, but admitted that he had seen the original while on exhibition, and said that he had made his photograph from an arrangement of figures, objects, and scenery which he had prepared in his own gallery. He further admitted that he had made the arrangement from his recollection of the painting, and with a view of presenting a stereoscopic photograph of the same representation as that given by the painting. The court declared this to be an unlawful use of the plaintiff's property.

The Lord Justice of Appeal said: "The stereoscopic slides are not photographs taken directly from the picture, in the ordinary mode of copying; but they are photographic pictures of a model itself copied from, and accurately imitating in its design and outline, the petitioner's painting. It is through this medium that the photograph has been made a perfect

(*a*) *The London Stereoscopic and Photographic Co., Limited* v. *Kelly and others* (1888), 5 T. L. R. 169.

(*b*) *Brooks* v. *Religious Tract Society*, W. N. (1895) 25; 45 W. R. 476; *Hanfstaengl* v. *Empire Palace* (1895), 11 T. L. R. 314, 368.

(*c*) (1860). 10 Ir. Ch. 121, 510.

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representation of the painting. Thus the object contrived and achieved, and the consequent injury, are the very same as if the copy had, in breach of confidence, been made on the view, and by the eye; and no court of justice can admit that an act illegal in itself can be justified by a novel or circuitous mode of effecting it. If it is illegal, so must the contrivance be by means of which it was effected."

Photograph is an original production.

In one case (*a*) it was contended that a photograph of an engraving was not an original production within the meaning of the Act. In overruling this objection, Mr. Justice Blackburn said: "The distinction between an original painting and its copy is well understood, but it is difficult to say what is meant by an original photograph. All photographs are copies of some object, such as a painting or a statue, and it seems to me that a photograph taken from a picture is an original photograph, in so far that to copy it is an infringement of this statute. As I have already pointed out, by section 2, although it is unlawful to copy a photograph or the negative, it is permitted to copy the subject-matter of the photograph by taking another photograph.

Absence of artistic merit.

The question of artistic merit is sometimes taken into consideration where at least there is not an exact reproduction. Thus where a plaintiff conceived the idea of printing and publishing cards bearing a representation of a hand holding a pencil in the act of completing a cross within a square, with a view to such cards being used at elections by illiterate voters, and procured an artist to make, under his directions, a drawing of the representation above described, and subsequently to the registration (which on other grounds was held to be bad) the defendants published similar cards with a hand, holding a pencil, in the act of completing a cross in a particular square of a voting paper, but the hand in the defendant's cards was in a slightly different position, though the idea was clearly taken from plaintiff's cards; and it appeared that neither the plaintiff's nor the defendants' drawings were of any artistic merit, it was held that an action for infringement of copyright could not be maintained, on the ground that the plaintiff's drawing was so far not the subject of copyright that it was not entitled to protection against an imitation which was not an exact reproduction (*b*). It is clear that, in the opinion of Lord Justice Bowen, in *Nottage* v. *Jackson* (*c*), the statute relates

(*a*) *Graves's case* (1869), L. R. 4 Q. B. 723.
(*b*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99; 38 W. R. 779.
(*c*) (1883), 11 Q. B. D. 627.

only to works of art of some sort or other. He considered, to put his opinion in the language of Mr. Justice Wills in the subsequent case of *Kenrick and Co.* v. *Lawrence and Co.* (*a*), that it was the product of the artistic faculty that was intended to be primarily, at all events, the subject of copyright—the thing to be protected by the Act.

This point, which is of considerable importance, was fully treated by Mr. Justice Wills. He says (*b*): "The mere choice of subject can rarely, if ever, confer upon the author of the drawing an exclusive right to represent the subject; and certainly, where the subject chosen is merely the representation to the eye of a simple operation which must be performed by every person who records a vote, there cannot possibly be an exclusive right to represent in a picture that operation. It may well be that something special in the way of artistic treatment even of this simple operation, if it existed, might be the subject of copyright; but nothing of the kind has been suggested or exists in the present case, and if it does exist without being discovered it has not been imitated, for there is nothing which by any flight of imagination can be called artistic about either the plaintiffs' or the defendants' representation of a hand making the mark of a cross. It may be also that even the coarsest, or the most commonplace, or the most mechanical representation of the commonest object is so far protected in registration that an exact reproduction of it, such as photography, for instance, would produce, would be an infringement of copyright. But in such a case it must surely be nothing short of an exact literal reproduction of the drawing registered that can constitute the infringement, for there seems to be in such a case nothing else that is not the common property of all the world. It is possible that in this case the proprietors of the drawing may have a right to be protected from a reproduction of their picture of a hand drawing a cross, in which every line, dot, measurement, and blank space shall be rendered exactly as in the original, or in which the variations from such minute agreement shall be microscopic. But I cannot possibly see how they can make a higher claim, or say that because they have registered a drawing of a hand pencilling a cross within a square, that no other person in the United Kingdom is at liberty to draw a hand pencilling a cross within a square for perhaps the next half century. The plaintiff, Mr. Jefferson, put his case as high as that proposition, for he said he might wish to claim applications of the picture to subjects

(*a*) 25 Q. B. D. 99, 104. (*b*) 25 Q. B. D. 99, 102.

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other than voting cards. It is obvious that, unless there be a copyright in the *subject*, any other person who wishes to draw a hand pencilling a cross within a square, cannot help producing something so like the plaintiffs' design as to look very like a colourable imitation of it. Now, it may or may not be very shabby conduct on the part of the defendant to wish to represent a hand pencilling a cross within a square, notwithstanding that the plaintiffs were first in the field, and notwithstanding that but for the picture used by the plaintiffs they might never have thought of making theirs; but I cannot see why they should be precluded, for the next fifty years perhaps, from representing in a picture the act which every voter performs when he records his vote, simply because one of the plaintiffs first thought of doing so, any more than if a new article of commerce were introduced of extensive distribution, and very simple and definite shape and proportions, and a drawing of it were made for one firm, all other persons should be precluded from making a drawing which, if it truthfully represented the same thing, must be exceedingly like the first drawing; nor, even though the draughtsman of the second drawing might never have seen the original article, or might have derived his knowledge of its existence and aspect solely from the first drawing. If a new and very simple tea-caddy were represented first by A. in a drawing which he registered, I cannot conceive that he could during his whole life prevent B. from drawing the same tea-caddy, and even from drawing it from his recollection of A.'s picture, nor that A. could claim copyright except in the extremely limited and useless sense in which I have suggested that a copyright might exist for a registered drawing of even such a subject. In the present instance, what the plaintiffs claim is really a right to prevent any one else from drawing the same subject as that of his drawing. If he has a copyright in the *subject* there is a colourable imitation, because the subject is not altered by changing the position of the hand and adding the indications of a shirt-sleeve. But it is clear that there is no copyright in the subject. As for the manner of treating the subject, there can be no copyright in that, for if the thing to be represented be represented at all it is impossible to treat it in any other way. It seems to me, therefore, that although every drawing of whatever kind may be entitled to registration, the degree and kind of protection given must vary greatly with the character of the drawing, and that with such a drawing as we are dealing with, the copyright must be confined to that which is special

to the individual drawing over and above the idea—in other words, the copyright is of the extremely limited character which I have endeavoured to describe. A square *can* only be drawn as a square, a cross *can* only be drawn as a cross, and for such purposes as the plaintiffs' drawing was intended to fulfil there are scarcely more ways than one of drawing a pencil or the hand that holds it. If the particular arrangement of square, cross, hand, or pencil be relied upon, it is nothing more than a claim of copyright for the *subject*, which, in my opinion, cannot possibly be supported."

"Living Pictures."

The question of what amounts to an infringement of the copyright in a picture was fully dealt with in what have been called the "Living Picture" cases (*a*).

The defendants, the Empire Palace, in the year 1894, produced on their stage certain tableaux vivants, which were intended to be representations of pictures the copyright in which belonged to the plaintiff. The representations were exact reproductions, as tableaux vivants, of the pictures, and the backgrounds, taken from photographs of the original pictures, were painted on canvas, the whole being enclosed in a large gilt frame. The plaintiff gave notice of motion for an interlocutory injunction to restrain this exhibition, contending that the groups of living persons were a reproduction of the design of his pictures within the meaning of the Act of 1862. The motion coming on for hearing before Mr. Justice Stirling, that learned Judge was of opinion that the representation of the designs of the pictures by means of groups of living persons was no infringement of the plaintiff's rights, and upon the defendants undertaking to keep until the trial the backgrounds to the "Living Pictures," or to take and keep photographs of the backgrounds used in respect thereof, and to keep an account of the moneys received at all exhibitions at which any such backgrounds were exhibited, and the number of times each such background was exhibited, no order was made on the motion. The plaintiff thereupon appealed to the Court of Appeal, who confirmed the opinion of Mr. Justice Stirling, and dismissed the appeal (*b*).

In giving judgment, Lord Justice Lindley, after referring to the terms of section 1 of the Act, said: "We are asked to say that the words 'copying and reproducing by any means' include reproducing in the sense of imitating or representing

(*a*) *Hanfstaengl* v. *Empire Palace* (1894), 2 Ch. 1; *Hanfstaengl* v. *Newnes* (1894), 3 Ch. 109; *Hanfstaengl* v. *Baines & Co.* (1895), A. C. 20.
(*b*) *Hanfstaengl* v. *Empire Palace* (1894), 2 Ch. 1.

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by means not equivalent to drawing or painting or photographing, or any such means, but by totally different means, by the exhibition of living figures. Is that what is aimed at? It appears to me obviously and plainly it is not. When we look at the language used, where an idea of that kind was present to the mind of the Legislature, we find a totally different class of words selected. The word 'represent' is the word used in the Dramatic Copyright Act (3 & 4 Will. IV. c. 15), but there is not a word about representing in the Act with which we are dealing. It does not say that the author of a picture shall be entitled to prevent anybody from representing his picture. It is intended to protect the author of the picture from anybody's producing a painting, drawing, or photograph of his picture so as to compete with him in the market. The language appears to me to be incapable of being stretched so as to touch such a representation as is sought to be restrained by this case. Light is thrown upon the true construction of section 1 by section 6, which provides for the forfeiture, and section 10 which prohibits the importation of copies unlawfully made. Those sections are not applicable to this Act if it is construed as the plaintiff asks us to construe it. But I do not rely so much upon those sections as upon the clear, and what I consider the unquestionable, meaning and intention of Parliament in passing this series of Acts. If we are to go out of the language and look further, I think a good deal of light is thrown upon this question by the case of *Dicks* v. *Brooks* (*a*), because, although it is very true, as was pressed upon us by Mr. Scrutton, that the word 'design' is not used in the Engraving Acts, still, the object of the Acts in protecting engravings is exactly the same as the object which the Legislature had in view in protecting paintings, drawings, and photographs in this Act. It was not intended to give them the right to restrain Madame Tussaud from exhibiting a representation of a painting in waxwork; but to restrain people from producing something which would compete in the market with the originals or with authorised copies of them."

So Lord Justice Kay: "A reproduction of a painting must, one would think, be by another painting or something which is equivalent to another painting. The argument has been rather put on the ground that this is a reproduction of 'the design thereof' within the meaning of the Act. What does 'reproduction' really mean? Reproduction is producing again. Is this a producing again the design of this painting within

(*a*) (1880), 15 Ch. D. 22, *ante* p. 348.

the meaning of the Copyright Act? I cannot think that it is. It seems to me that in order to reproduce the painting you must have something which itself is and would be properly described as a picture." According to these views a sculpture apparently could not be an infringement of the copyright in a picture.

This case subsequently went to trial, when the court adhered to its former opinion as to the groups, but held that the backgrounds were infringements of the plaintiff's copyright (*a*).

At the same time that the plaintiff in the case above referred to commenced his proceedings against the Empire Palace he also took proceedings against two daily newspapers—the 'Daily Graphic' and the 'Westminster Budget'—for having published in their papers sketches, made by artists who had visited the Empire, of the tableaux vivants that had been represented on the stage of the theatre, alleging that these sketches were infringements of the copyright of his pictures, though the sketches were not taken directly from the pictures, but indirectly through the tableaux vivants. Mr. Justice Stirling held that, though the tableaux vivants were not themselves infringements of the plaintiff's copyright, nevertheless the sketches published in the newspapers were reproductions of the design of the pictures and he granted an injunction (*b*).

From this decision the 'Westminster Budget' did not appeal, but the 'Daily Graphic' did, and succeeded in obtaining a reversal of Mr. Justice Stirling's decision in the Court of Appeal (*c*), and the decision of the Court of Appeal was finally affirmed by the House of Lords (*d*).

Mr. Justice Stirling considered, on the authority of *ex parte Beal* (*e*), that the fact that the sketches were indirect, and not direct, copies of the pictures made no difference, and that the sketches must be treated as copies of the pictures. The answer to the argument that the illustrations in no way competed with copies of the pictures authorized by the plaintiff appeared to him to be that the illustrations constituted a violation of the exclusive right conferred by the statute of 1862; that, in the language of Kelly, C.B., in *Bradbury* v. *Hotten* (*f*), the defendants were thereby applying for their own use and for their own profit what otherwise the plaintiff might have turned, and possibly might still turn, to a profitable account.

In the Court of Appeal Lord Justice Lindley was not

(*a*) (1895), 11 Times L. R. 314, 368; (1895), W. N. 76.
(*b*) *Hanfstaengl* v. *Newnes* (1894), 3 Ch. 109. (*c*) *Ibid.*
(*d*) *Hanfstaengl* v. *Baines & Co.* (1895), A. C. 20.
(*e*) (1868), L. R. 3 Q. B. 387. (*f*) (1872), L. R. 8 Ex. 1, 6.

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prepared to say, as a matter of law, that although the sketches were made from something in which there was no copyright, and although they represented something which was not of itself an infringement of the plaintiff's copyright, the sketches might not infringe the plaintiff's rights, if they could be fairly regarded as reproductions of his pictures, or of the designs thereof. To hold otherwise would be to open the door to indirect piracies, which he was not all disposed to do. A copy of a foreign copy of an English painting would not, he apprehended, be protected by sect. 2 (*a*), and the judgment of Lord Blackburn in *ex parte Beal* (*b*) showed that if a painting is, in fact, reproduced, it is immaterial what the intermediate steps might be by which the reproduction was arrived at. His decision was based upon different and wider grounds. "The sketches are not intended to be, and are not, in fact, copies of the pictures at all, neither are they intended to be, nor are they, in fact, reproductions of the designs of the pictures. They do not represent any of the beauties. They are rough sketches, made for a different purpose and answering a very different purpose, that purpose being, not to give an idea of the plaintiff's pictures, but to give a rough idea of what is to be seen at the Empire Theatre. In giving that idea, it is true that they also give a very rough idea of the subject represented in the plaintiff's pictures. It is also true that in *West* v. *Francis* (*c*) Mr. Justice Bayley said: 'A copy is that which comes so near to the original as to give to every person seeing it the idea created by the original.' But in applying this to any particular case the degree of resemblance is all important, and the possibility of injury to the plaintiff must be regarded. It is only by a great stretch of language and by the exercise of much imagination that these sketches can be regarded as copies of the plaintiff's pictures or the designs thereof. The case is very unlike *Gambart* v. *Ball* (*d*), where engravings were copied by photography. I cannot bring myself to say that the sketches complained of are, in any fair sense of the words, copies of the plaintiff's pictures or reproductions of the designs thereof within the meaning of the statute to which I have referred. The question, if it came before a jury, would be one of fact for the decision of the jury, or a proper exposition by the judge of the meaning of the statute, and I do not believe that any jury, properly directed, would find these sketches to

(*a*) See *Murray* v. *Bogue* (1852), 1 Drew. 353.
(*b*) (1868), L. R. 3 Q. B. 387.
(*c*) (1822), 5 B. & Ald. 737, 743.
(*d*) (1863), 14 C. B. (N.S.) 306.

be copies of the plaintiff's pictures or reproductions of his designs. The defendants have not, in fact, directly or indirectly, intentionally or unintentionally, made any use, certainly not any unfair use, of the plaintiff's pictures or of the brains of their authors" (*a*).

In the House of Lords Lord Herschell, L.C., was equally clear that the defendants had not infringed the plaintiff's copyright. It was obvious, he said, that the plaintiff could not successfully claim to have a monopoly of every treatment of such common subjects as love and courtship, or charity. He was far from saying that a "Living Picture" might not be so arranged to represent an existing painting that a photograph or drawing of the "Living Picture" would be a copy of the design of that painting. All that he could say was that this must depend upon the character of the picture, and what is justly to be regarded as its design. In the present case, the sketch most favourable to the plaintiff's case was admittedly that representing "Courtship." As to that, "there is no doubt a resemblance between the sketch and the photograph from the painting. In each case a young man and a young woman are standing beside one another close to a stile or fence. In each case the woman is shading her head by a parasol, and the dress of the man is somewhat similar in the two. The idea suggested is, of course, the same, each represents 'Courtship,' but the idea of a young man courting a young woman at a country stile is of great antiquity. It has often formed the subject of pictorial representation. This cannot be said to be the design of the plaintiff's painting within the meaning of the Act. Much more must be comprehended than this. There can only be a copy of such a design if the treatment of the subject be the same. Now, comparing the sketch with the photograph from the painting, I do not think this can be said to be the case. The faces are different; the mode in which the woman's hair is arranged is different; the pose is different; the attitudes are different; the background is different; and in the case of the sketch the foreground is wanting. In the artist's design all these things play a part, and, though I do not say that a variation in one or even more of these respects would prevent the sketch being a copy of the design, yet comparing the two, and considering the design of the painting as a whole, I cannot avoid the conclusion that the sketch is not a copy of the painting or of the design thereof, and therefore that there has been no infringement" (*b*).

(*a*) (1894), 3 Ch. p. 131.

(*b*) (1895), A. C. p. 24.

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Effect of decisions in the "Living Picture" cases.

Too much stress must not be placed upon the fact that in these cases some of the judges attached importance to the fact that the alleged piracies could not compete in the market with the plaintiff's pictures. A photograph hardly competes in the market with a painting, yet the owner of the copyright in a painting clearly has a right to prevent sales of a photograph of it, for the artist himself may some day make and sell such a photograph. In *Hanfstaengl* v. *Holloway*(*a*), copies of the plaintiff's pictures were put on pill boxes, yet this was held to be an infringement of copyright. Nor again did the decisions in the "Living Pictures" cases turn entirely on the fact that the copies were bad imitations. The effect of the decisions, it is submitted, rather is that the combination of circumstances must be looked at; and that, if it be found that the alleged copies are made for entirely different objects from the original picture, then it is of importance to examine how close a copy the alleged infringement is of the original picture. Another matter that may be taken into consideration is whether the conception of the picture is original or hackneyed.

What is the "design" of a picture?

We may conclude from the "Living Picture" cases that the words, "the design thereof," in section 1 of the Act of 1862, do not mean the "idea" of the picture. Lord Justice Davey thought that these words were probably inserted in order to bring within the protection of the Act a copy through a different medium; for instance, a black and white copy of a picture made by the engraver, the photographer, or the draftsman (*b*). According to Lord Watson the expression means nothing more than the particular forms and arrangements (whether of lines or colouring) which the copyright author has selected as the vehicle for conveying his idea to those who see his work. He thought there might very well be cases in which the author's design, and the idea to which it gives birth, would be both of them so novel and exceptional that it would be difficult, if not impossible, for another author to create the same idea without trenching upon his design (*c*). If this latter opinion be correct the design of a picture is only of importance when it is exceptionally original.

Remedies for infringement.

The remedies of a proprietor of copyright in paintings, drawings, and photographs, in respect of infringements, are: (1) Penalties; (2) damages under section 11; and (3) an injunction. Section 10 also prohibits the importation of piratical copies and provides that if the proprietor of the copyright or

(*a*) (1893), 2 Q. B. 1; cf. *Hildesheimer* v. *Faulkner* (1901), 2 Ch. 552.
(*b*) (1894), 3 Ch. at p. 134. (*c*) (1895), A. C. at p.

his agent shall declare that any goods imported are repetitions, copies, or imitations of his work, then such goods may be detained by the officers of His Majesty's Customs.

Penalties recoverable.

The penalties to which an offender is liable under section 6 are to pay to the proprietor a sum not exceeding £10 "for every such offence" and to forfeit the infringing copies. It was held so long ago as the year 1868, in *Beal's case*, that the offender is liable to the penalty for every copy sold. Thus, where twenty-six copies were disposed of in two parcels of thirteen copies each, it was held that the penalty was properly imposed on every copy sold. "It is quite clear," said Mr. Justice Blackburn, that the section "imposes a penalty for every copy sold: a different construction would result in an absurdity, and defeat the intention of the legislature. The penalty is imposed also for importation, and it would be monstrous, that if a man had consigned from abroad a cargo of imitations, the utmost penalty that could be imposed on him would be the sum of £10. It would be worth his while to run the risk of paying that small sum and to import and distribute for sale elsewhere a quantity worth many thousands. The Legislature were dealing with an offence which was likely to be committed wholesale, and they have used words meaning that the sale of every copy shall be an offence, and if ten copies be sold at one time, ten offences are committed, and the offender may be punished for each separately" (*a*).

Though the statute mentions a maximum penalty, it does not prescribe a minimum penalty. It has been held in several cases (*b*), that a farthing, being the smallest coin of the realm, is the smallest penalty that can be imposed in respect of each copy sold, but obviously if a large number have been sold, a sum of one farthing in respect of each might amount in the whole to a far larger sum than the justice of the case required, and in a recent case (*c*) the Court of Appeal, whilst approving and following *Beal's case*, have held that the court may award for all the offences a lump sum, which, if divided by the number of offences, will give for each a fraction less than a farthing. "The only reason," said Collins, L.J., in the case referred to, "why a farthing is generally adopted as the lowest measure of recoverable damages in this country is that a

(*a*) *Ex parte Beal* (1868), L. R. 3 Q. B. 395; *Hildesheimer* v. *Faulkner* (1901) 2 Ch. 552.

(*b*) *Ellis* v. *Marshall* (1895), 64 L. J. Q. B. 757; *Buschet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73; *Green* v. *Irish Independent Co.* (1899), 1 Ir. Rep. 386.

(*c*) *Hildesheimer* v. *Faulkner* (1901), 2 Ch. 552, since followed in *Nicholls* v. *Parker* (1902), 18 T. L. R. 459, which, it is believed, is under appeal to the House of Lords.

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farthing is the lowest sum for which execution can issue, it being; I believe, at the present time, the smallest sum which is actually coined. But when there is no need to issue execution for that particular sum, where is the necessity that the sum assessed as the proper penalty should be represented by a coin? It seems to me that when, as here, execution is not contemplated for the particular penalty, there is no reason in principle or common sense why the penalty should not be measured as it ought to be, namely, by relation to the offence and not by reference to the possibility of levying execution, which is the only justification for giving a larger sum than justice would require."

Ignorance, when an excuse.

It will be noticed that under section 6 the person making the infringements, or causing them to be made, is liable to penalties, even though he acts ignorantly, but a seller or importer is only liable when he acts with knowledge that the copies have been unlawfully made.

Provisions for repressing the commission of fraud in the production and sale of works of art.

The 7th section imposes penalties on every person doing or causing to be done any of the following acts:

1st. If he shall fraudulently sign or otherwise affix, or cause to be signed or otherwise affixed, to any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram.

This clause was rendered necessary by the decision in the case of *The Queen* v. *Close* (*a*). A picture had been painted by Mr. Linnell, who signed and sold it for £180. The prisoner was a picture dealer, and was indicted for fraudulently selling a copy of Linnell's picture as and for the genuine picture which he had painted. Mr. Linnell's name was likewise painted on such copy, which the prisoner sold for £130. The indictment contained three counts: the first charged the prisoner with obtaining money under false pretences, but upon this count he was acquitted; the second count charged him with being a *cheat* at common law (*b*), by reason of writing Linnell's name upon the copy; and the third count charged the prisoner with a *cheat* by means of a forgery of Linnell's name upon the copy. Upon these last two counts the prisoner was convicted; but his counsel objecting, that they disclosed no indictable offence at common law, the judgment was respited in order that the opinion of the Criminal Court of Appeal might be taken upon the objection so raised. The case was afterwards argued before

(*a*) (1858), 27 L. J. (M.C.) 54; 7 Cox, C. C. 494; 6 W. R. 109.
(*b*) *Albin's Case*, Tremaine, P. C. 109; *Worrall's Case*, *ibid.* 106; 2 East, P. C. 18, cited 2 Russell on Crimes, 282.

five judges, who formed such court of appeal, and they unanimously held that the conviction was *wrong*; that there was no forgery; that "forgery must be of some document or writing," and Linnell's name in this case must be looked at merely as in the nature of an arbitrary mark made by the master to identify his own work, and was no more than if the painter had put any other arbitrary mark made by him, as a recognition of the picture being his. As to the second count of the indictment, the court held that the conviction could not be sustained, because it did not sufficiently show that the prisoner sold the copy by *means* of Linnell's signature being forged upon it.

2nd. If he shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition or distribution, any painting, &c., having thereon the name, initials, or monogram of a person who did not execute such work.

3rd. If he shall fraudulently utter or dispose of any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been executed by the author of the original work from which such copy or imitation shall have been made.

4th. If, where the author of any painting, drawing, or photograph, or negative of a photograph, shall have sold such work, any person shall afterwards make any alteration by addition or otherwise during the life of the author, without his consent, or shall knowing sell (*a*) or publish such work, or any copies thereof so altered, or of any part thereof, as or for the unaltered work of such author.

This clause is intended to prevent the alterations so frequently made in the works of great artists for fraudulent purposes. Mr. Charles Landseer stated a most glaring case in his evidence before a committee appointed by the Society of Arts. It appears that he painted a picture called the 'Eve of the Battle of Edgehill,' in which he introduced two dogs, which had been touched up by his brother Sir Edwin, and, as he himself admitted, greatly improved. The picture was sold to a dealer, who cut out the figures of the dogs and sold them as the work of Sir Edwin Landseer, and he then filled up the hole in the original picture with two dogs painted by an inferior artist, and sold the whole picture as the work of Mr. Charles Landseer.

(*a*) Unless the person selling were cognizant of the fact of alteration the act would be an entirely innocent one. See *Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton*, 28 L. J. (M.C.) 216.

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Every offender under this section shall forfeit to the person aggrieved a sum not exceeding £10, or not exceeding double the full price at which all such copies or altered works shall have been sold or offered for sale; and they shall be forfeited to the person, or the assigns, or legal representatives of the person whose name, initials, or monogram shall have been fraudulently used; provided such person shall have been living at or within twenty years next before the time when the offence may have been committed.

It would seem that if the double price of the copies be less than £10, yet that amount may still be recovered, and that if the double value exceed £10, then any sum up to such double price may be recovered by the person aggrieved, as an inducement to him to proceed, he having to give up the spurious work to the true artist or his representatives, and receive from the person who has defrauded him the price he has paid and as much more.

The penalties imposed as a punishment for a criminal offence.

Under these penal sections it has been determined that a person sentenced to pay a penalty cannot, by executing a deed of arrangement with his creditors, escape from the imprisonment consequent on a failure to pay (*a*). Mr. Graves, the well-known publisher of engravings, became the proprietor of the copyright in Frith's 'Railway Station,' and other paintings, and the designs thereof, and also in the copyright in the engravings of such pictures. Photographic copies of these engravings were then fraudulently made, and sold for about one-twentieth of the price at which the copies of Mr. Graves's prints were sold. Such photographic copies were exact reproductions of the engravings and of a large size. Upon the 16th of May, 1868, a man named William Banks Prince was convicted by a magistrate at Lambeth of having sold no less than nineteen of the fraudulent photographic copies in question. He was adjudged to pay a penalty of £5 in respect of each of the copies sold; and in default of payment the magistrate, under powers given him by the Small Penalties Act, 1865, sentenced Prince to fourteen days' imprisonment in respect of each of the nineteen offences he had committed by selling the photographic copies. While the magistrate was giving his judgment Prince executed a deed of composition with his creditors, which

(*a*) *Graves, Ex parte, In re Prince* (1868), 19 L. T. 241; Law Rep. 3 Ch. 642; 16 W. R. 993; *Bancroft* v. *Mitchell* (1867), Law Rep. 2 Q. B. 549. See, however, *Johnson, Ex parte, In re Johnson* (1867), 15 W. R. 160; 15 L. T. 163; *Rex* v. *Stokes* (1775), Cowp. 136; *Rex* v. *Wakefield* (1812), 13 East, 190: *Rex* v. *Myers*, 1 T. R. 265. As to limitation of time of three months for action under the 8 Geo. II. c. 13, not applying to an action on the case brought under 17 Geo. III. c. 57, see *Graves* v. *Mercer* (1868), 16 W. R. 790.

contained a release from them. That deed was assented to by certain creditors of Prince, and then registered in due form. Not having paid the penalties in which he was convicted he was taken into custody upon a magistrate's warrant, and imprisoned pursuant to his sentences. Thereupon he applied to the Bankruptcy Court for his discharge from custody, upon the ground that the penalties in which he had been convicted were *debts*, from the payment of which he had been released by the deed of composition executed between him and his creditors. The registrar held that Prince was entitled to his discharge.

From this decision Mr. Graves appealed to the Lords Justices, upon the ground that penalties recovered under the Fine Arts Copyright Act, 1862, were in the nature of a punishment, and consequently were not released by the composition deed which had been executed between Prince and his creditors. On the contrary, it was argued for the respondent that, inasmuch as under the Fine Arts Copyright Act the penalties were payable to Mr. Graves, they amounted in the aggregate to nothing more than a debt, which would have been provable under bankruptcy, and was therefore released by the deed. But Lord Justice Page Wood held that what Prince had done in selling the photographic copies was throughout the Copyright Act treated as an offence, as a *fraudulent* act, for which a punishment was to be inflicted. The penalty provided by the Act was not meant to be the measure of damage sustained by the proprietor of the copyright work which had been pirated, because he was expressly permitted to recover damages in action (in addition to the penalties) under the 11th section of the Act. The object of the Small Penalties Act was merely to provide a simple method of enforcing the payment of penalties not exceeding £5. The penalty given by the Copyright Act was, in his Lordship's opinion, a punishment for what was in the nature of a criminal offence, and the debtor was therefore not entitled to his discharge from custody unless the penalties were paid. The Lord Justice Selwyn was also of opinion that whether the words or the spirit of the Copyright Act, under which the penalties had been incurred, were looked at, the order in bankruptcy was wrong, and must therefore be dismissed with costs.

Provisions as to forfeiture of piratical copies.

The provision as to forfeiture of piratical copies is almost nugatory, as the Act gives no power to enter a house and search for copies. One case was brought before the Copyright

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Commissioners of 1878, where a conviction for selling piratical copies having been obtained, the magistrates had made an order that the copies should be delivered up, but it was found that the order could not be enforced.

Action for damages.

The right to damages conferred by section 11 is expressly stated to be in addition to the plaintiff's right to recover penalties. Under this section the plaintiff need not prove guilty knowledge on the part of the offender, and he can in the same action recover damages not only for the infringement, but also for the retention or conversion of all unlawful repetitions, copies, and imitations and negatives of photographs.

Production of original picture not necessary in action for infringement.

In an action for infringement of copyright in a picture the production of the original is not essential to the proof of the plaintiff's case; were this necessary many cases of infringement would go unpunished, as often the proprietorship of the copyright is in one, and the possession of the picture is vested in another, who could not be compelled to produce the same, and indeed in some cases the picture might be abroad or even have been destroyed. In one case (*a*) the plaintiff, the proprietor of the copyright in a painting called 'The Peacemaker,' by Marcus Stone, R.A., did not produce the picture, but gave evidence that he had seen it, and that a photograph sold by the defendants, which he produced, was directly taken from an engraving which was an exact copy of the original picture, and he produced the engraving. It was held that this evidence was admissible to prove the infringement, and was evidence for the jury that the photograph sold by the defendants was a copy or the original picture.

Indecent works.

There can be no copyright in any obscene, immoral, or libellous picture, and where an action in respect of infringement fails on the ground of the indecency of the work, and the indecency has been repeated in the infringements, the action will be dismissed without costs (*b*).

There is no limitation as to the time within which actions are to be brought under the Act of 1862.

The provisions of the International Copyright Act, 1844, 7 & 8 Vict. c. 12, are extended to paintings, drawings, and photographs, by section 12 of the Fine Arts Copyright Act, 1862 (*c*).

The Royal Commissioners in their Copyright report, 1878, felt some difficulty on the subject of photographs. They

(*a*) *Lucas* v. *Williams & Sons* (1892), 2 Q. B. 113; 61 L. J. Q. B. 595.
(*b*) *Bauchet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73.
(*c*) See Chap. on International Copyright, *post.*; but the Act of 1862 does not extend to the Colonies; *Graves* v. *Gorrie* (1903), A. C. 496.

doubted whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. "When photographs," said they, "are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand, the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a painting.

"Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It, therefore, becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings. We suggest that the copyright in a photograph should belong to the proprietor of the negative, but in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them."

The Commissioners further thought that the same questions arose in respect of engravings, lithographs, prints, and similar works, and were of opinion that so far as regards the transfer and vesting of the copyright, these arts should be placed upon the same basis as photographs.

Artists' studies and sketches.

In concluding their general report upon the fine arts they referred to a matter as to which artists say the law is disadvantageous to them. Before the artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold (*a*).

(*a*) The doubt exists by reason of the terms of the 6th section of the 25 & 26 Vict. c. 68.

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The Commissioners doubted whether this fear was well-founded, but as the use of such studies and sketches as they had described could not, in their opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, they thought the doubt should be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat or colourably imitate the design of the original work (*a*).

Replicas.

Where an artist has painted a picture on commission, as the copyright is in the commissioner, he may not paint a *replica*, but where this is not the case, and there is no agreement as to the copyright within the 25 & 26 Vict. c. 68, the artist is at liberty so to do.

(*a*) Par. 118–124.

PART IV.

COPYRIGHT IN DESIGNS.

CHAPTER I.

SUBJECT-MATTER OF COPYRIGHT.

Copyright in designs.

CALICO-PRINTING, the art of dyeing woven fabrics of cotton with variegated figures and colours more or less permanent, has been practised from time immemorial in India. The art was known to the ancient Hindus and Egyptians. Pliny describes it with sufficient precision. "Robes and white veils are painted in Egypt," says he, "in a wonderful way; being first imbued, not with dyes, but with dye-absorbing drugs, by which they appear to be unaltered, but when plunged for a little in a cauldron of the boiling dye-stuff they are found to be painted. Since there is only one colour in the cauldron, it is marvellous to see many colours imparted to the robe in consequence of the modifying agency of the excipient drug. Nor can the dye be washed out. Thus the cauldron, which would of itself undoubtedly confuse the colours of cloths previously dyed, is made to impart several dyes from a single one, painting while it boils" (*a*).

Anderson, in his 'History of Commerce,' places the origin of English calico-printing as far back as the year 1676; but Mr. Thomson, a better authority, assigns the year 1696 as the date of the commencement of the practice of this art in England, when a small print-ground was established on the banks of the Thames, at Richmond, by a Frenchman.

Linen was long ago, and silks and woollen fabrics also have recently been, made the subject of topical dyeing, upon principles analogous to those of calico-printing, but with certain peculiarities arising from the nature of their textile materials.

(*a*) Pliny, 'Natural History,' lib. xxxv. c. 2.

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The first act for protection of designs.

The first Act granting protection to the inventor of designs was passed in 1787 (the 27 Geo. III. c. 38). This Act was followed by the 29 Geo. III. c. 19, and the 34 Geo. III. c. 23. But these Acts did not extend to Ireland, nor to fabrics other than linen and cotton, and did not afford any protection to designs on fabrics composed of animal products, as wool, silk, or hair, or mixtures of those materials with flax and cotton. The printing on fabrics of animal and vegetable substances, and on mixed fabrics, having subsequently grown up into an important branch of manufacture, an Act of Parliament was introduced in 1839 (2 Vict. c. 13), by which the same protection was given to designs printed on fabrics of animal substances, or a mixture of animal and vegetable substances, as was afforded to designs printed on fabrics of vegetable substances; and the provisions of the existing Acts were extended to Ireland. In the same year, by the Act 2 Vict. c. 17, protection was given to proprietors of designs for articles of manufacture.

We followed the French in establishing any design rights at all; and it would be well if we adopted their simple, sensible arrangement for securing them.

In the early part of the last century the French entertained more correct notions of the rights of property in design than the British, and so convinced were they that great benefits would flow from rejecting the claim of the copyist to reap the original designer's profits, that, in 1737 and 1744, laws established a property in designs for the manufacturers of Lyons, and in 1787 the benefits of legal protection were fully established. The basis of the pre-eminence of the French, and the means by which they have attained their unrivalled position in *taste*, is *efficient protection*, and it is certainly singular that this fundamental element and primary cause of superiority should have been so long overlooked in this country.

Division of the right.

Until the Act of 1883 we had in England two distinct rights, founded upon different Acts of Parliament, in the application of designs—copyright in the application of designs for ornamental purposes, and copyright in the application of designs for the shape and configuration of articles of utility.

The former was regulated by the 5 & 6 Vict. c. 100, amended by 6 & 7 Vict. c. 65, 13 & 14 Vict. c. 104, 21 & 22 Vict. c. 70, 24 & 25 Vict. c. 73, and 38 & 39 Vict. c. 93 (*a*).

(*a*) Special protection was given to designs exhibited in the great exhibition in 1851, by 14 Vict. c. 8, and permanent provision for exhibition of designs at Industrial and International Exhibitions was made by 28 & 29 Vict. c. 3, and 33 & 34 Vict. c. 27.

Copyright in designs for ornamental purposes.

The 5 & 6 Vict. c. 100, repealed all the previous Designs Acts, and enacted that the proprietor of every new and original design not previously published (*a*), whether such design were applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural or partly artificial and partly natural, and whether such design were so applicable for the pattern or for the shape or configuration, or for the ornament, or for any two or more of such purposes, or by whatever means such design might be so applicable, whether by printing or by painting or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, natural, mechanical, or chemical, separate or combined, should have the sole right of applying the same to any article of manufacture or to any such substance as aforesaid during the respective terms thereinafter mentioned, *i.e.*, terms varying from nine months to five years.

The statute did not mention "any article of manufacture" being a design, but considered the design to be protected as applicable to the ornamenting of any article of manufacture. The design was always considered as different from the "article of manufacture, or the substance to which it was to be applied."

The Commissioners of Patents empowered to extend time.

By the 13 & 14 Vict. c. 104, s. 9, as amended by the 38 & 39 Vict. c. 93, the Commissioners of Patents were empowered from time to time to order that the copyright of any class of designs or any particular design registered or which might be registered under the Designs Act, 1842, should be extended for such term, not exceeding the additional term of three years, as the said Commissioners might think fit; and the said Commissioners had power to revoke or alter any order from time to time.

Useful designs.

Original designs for any article of manufacture having reference to some purpose of utility so far as the designs were for the shape or configuration of such article, and whether for the whole of such shape or configuration or only for a part thereof, were governed by the 6 & 7 Vict. c. 65 (*b*), which provided that the proprietor of such design not previously

(*a*) As to what amounts to publication, see *Cornish* v. *Keene* (1835), Webst. Pat. Ca. 501, 508. See *Anon.* 1 Chitt. 24: *Carpenter* v. *Smith* (1841), 9 M. & W. 300; S. C. Webst. Pat. Ca. 530, 536; *Jones* v. *Berger* (1843), *ibid.* 550; *The Household Co.* v. *Neilson* (1843), *ibid.* 718, n.; *Stead* v. *Williams* (1845), 7 Man. & Gran. 818. See *Prince Albert* v. *Strange* (1849), 1 H. & Tw. 1; *Dalglish* v. *Jarvie* (1850), 14 Jur. 945; S. C. 2 Mac. & G. 231; 2 H. & Tw. 437. In the last cited case it was queried whether the nine months' copyright given by the Act referred to in any designs for ornamenting articles of manufacture dated from the publication of the manufacture or from the publication of the design.

(*b*) Amended by 13 & 14 Vict. c. 104, 21 & 22 Vict. c. 70, and 38 & 39 Vict. c. 93.

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published in the United Kingdom of Great Britain and Ireland or elsewhere, should have the sole right to apply such design to any article, or make or sell any article according to such design for the term of three years, to be computed from the time of such design being registered according to that Act. But the enactment did not extend to such designs as were within the 5 & 6 Vict. c. 100, 38 Geo. III. c. 71, or the 54 Geo. III. c. 56.

Existing legislation.

Now the distinction between ornamental and useful designs is abolished, and the law relating to designs is consolidated and governed by the Patents, Designs, and Trade Marks Act, 1883 (which has repealed all previous legislation relating to designs except of sculpture), and the amending Acts 48 & 49 Vict. c. 63, 49 & 50 Vict. c, 37, 51 & 52 Vict. c. 50 (*a*). The principal Act gives to the proprietor of a design registered under that Act copyright therein for five years dating from the day on which the application for registration is received (*b*).

Definition.

A design is "for the purposes of this Act" to mean any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern or for the shape or configuration, or for the ornament thereof (*c*), or for any two or more of such purposes and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

The design merely protected.

The Act protects merely the design to be applied to an article of manufacture, or substance for pattern, shape, or ornament, and does not afford or profess to afford protection to any mechanical principle or contrivance directly. The shape or configuration merely is protected. But though this is the case the result of such protection may be to secure important advantages such as attend a mechanical contrivance, if these advantages should be the result directly or indirectly of the shape or configuration adopted and protected.

A design may be the subject of copyright though it depict

(*a*) These Acts may be cited collectively as the Patents, Designs, and Trade Mark Acts, 1883 to 1888.

(*b*) 46 & 47 Vict. c. 57, s. 50 (1); Designs Rules, 1890, r. 21.

(*c*) Colour cannot be the subject-matter of a design; *Grafton* v. *Watson* (1884), 50 L. T. at p. 423; *Nevill* v. *Bennett* (1898), 15 R. P. C. at p. 417.

an article incomplete in itself, but which is intended to be used in combination with and as part of another article of manufacture, *e.g.*, a door of a kitchen-range (*a*).

Shape and configuration.

Where the design was of a new ventilator, consisting of an oblong pane of glass fixed in a frame, which was inserted into an ordinary window-frame, and was hinged at the top, so as to open and admit the air, by means of a screw acted upon by cords passing over its head, and having a half-pane of glass fixed in the lower portion of the frame in which the ventilating frame ended, so as to prevent a downward draught, the claim of the inventor was said to be for the general configuration and combination of the parts, some of which were not original. This was held not to be a design for the shape and configuration of an article of manufacture within the 6 & 7 Vict. c. 65, and therefore not the subject of registration; and a conviction for the infringement of such a registered design was quashed for want of jurisdiction (*b*). Erle, J., in giving his opinion that the invention was not within the meaning of the statute, said: "It is a combination of means for the purpose of easily admitting air and avoiding a downward draught, and there is a skilful combination of means to produce this result. But the particular shape or configuration is accidental and wholly unimportant, and unconnected with the purpose to be attained. An oblique pane is of no particular use; a square or circular pane, and a straight or curved screen, would produce the same result. If the prosecutor relies on the shape or configuration as producing a useful result, he fails in making out that the defendant has infringed his right, because there is no doubt that the shape of the defendant's invention varies materially from that registered by the prosecutor: in the one the pane being nearly square and in the other oblong, and the screw being straight in the one, and crooked in the other. The prosecutor intended to protect a combination of means producing a useful result, and that is within the law relating to patents, and not within statute 6 & 7 Vict. c. 65" (*c*).

Again, the design of a "protector label," which consisted in

(*a*) *Walker, Hunter, & Co.* v. *Falkirk Iron Co.* (1887), 14 C. of S. Cas. 1072 (Sc.), 24 Scot. L. R. 751; 4 Rep. Pat. Cas. 390.

(*b*) *Reg.* v. *Bessell* (1851), 15 Jur. 773; 20 L. J. (M.C.) 177; 16 Q. B. 810.

(*c*) The contrary was held in *Heywood* v. *Potter* (1853), 1 E. & B. 439; 17 Jur. 528; 22 L. J. (Q.B.) 133; but subsequently the 21 & 2 Vict. c. 70, s. 4, enacted that nothing in the 4th section of the 5 & 6 Vict. c. 100 should extend, or be construed to extend, to deprive the proprietor of any new and original design applied to ornamenting any article of manufacture contained in the said 10th class of the benefits of the Copyright of Designs Acts or of this Act; provided there shall have been printed on such articles at each end of the original piece thereof the name and address of such proprietor, and the word "Registered," together with the year for which such design was registered.

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making in the label an eyelet-hole, and lining it with a ring of metallic substance, through which a string attaching the label to packages passed, was held not to be within the protection of the old statutes (*a*). But the design of a newly-invented brick, the utility of which consisted in its being so shaped that when several bricks were laid together in building a series of apertures were left in the wall through which the air might circulate, and a saving in the number of bricks effected, was held to form the proper subject of registration under the last-mentioned statutes (*b*).

Subject of registration must be not an article of manufacture, but a design.

The subject of registration must not be an article of manufacture, but a design; that is, a combination of lines producing pattern, shape, or configuration by whatever means such design may be applicable to the manufacture. The "design" is always considered different from the "article of manufacture, or the substance to which it is to be applied."

Thus where M. registered as a design a picture of a basket, stating that his claim was for the pattern of a basket consisting in the osiers being worked in singly, and all the butt ends being outside, it was held that what the plaintiff had registered was in reality a process or mode of manufacture, and was not a design within the meaning of the Patents, Designs, and Trade Marks Act, 1883, and that a design must be something appealing to the eye, and to the eye separable from the object to which it is applied (*c*).

In another case the plaintiff's design for the shape and configuration of that part of the corset in which the busks are inserted was expunged from the register as not being proper subject of a design. In previous corsets the busks were either sewn into the front of the corset or were laced in so as to be easily removable, but with the lacing at the outer margin of the busks. In the plaintiff's corsets the busks were laced in and thus were easily removable, but the lacing was diagonal

(*a*) *Margetson* v. *Wright* (1848), 2 De G. & Sm. 420.

(*b*) *Rogers* v. *Driver* (1850), 20 L. J. (Q.B.) 31; 16 Q. B. 102. See *Millingen* v. *Picken* (1845), 1 Com. Ben. Rep. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714. These cases were decided under the utility statutes. Whether a design is useful or not is now wholly immaterial. "What you have to see is whether, tested by the eye, the design is novel or original within the meaning of the Act. That it may be useful seems to me to be immaterial, because I think it must be admitted that however useless a novel design may be, it would still be within the meaning of the Act if it were novel or original." *Per* Farwell, J., *re Morton's Design* (1900), 17 R. P. C. 117.

(*c*) *Moody* v. *Tree* (1892), 9 Rep. Pat. Cas. 233. Vaughan Williams, J., said: "The plaintiff seems discreetly to have chosen the best description he could under the circumstances and he calls it a pattern. The fact of his calling it a pattern, does not make it a pattern. What he calls a pattern is the mode of manufacture which consists in the osiers being worked in singly, and with the butt ends outside."

and at the inner margin of the busks, so that when fastened by studs and clasps this diagonal lacing gave the appearance of the corset having been really laced together. The court considered that, as there was no new appearance given by the plaintiff's design, there was not, so far as design was concerned, any novelty or originality that could be tested by the eye (*a*).

Mr. Carpmael, of the Repertory of Patent Inventions, Lincoln's Inn, has thus endeavoured to make the distinction clear: "In registering any new design for a table lamp, all which could be secured under such registration, would be some peculiarity of form of an ornamental character in the stem or oil vessel, or in the glass shade, or some ornament applied thereto, if under the first mentioned statute, or some novelty in the shape or configuration, without reference to ornament, if under the second statute;—no new mode of supplying oil to the wick, nor any new mode of raising the wick, nor any new apparatus for supplying air to support combustion, could become the subject-matter of a registration. The simple configuration, or contour, or ornament of the lamp, or some particular part of the lamp, would be the only subject for registration; and any person might, without infringing the registration, make the same description of lamp, all parts acting mechanically in the same manner to produce the same end, so long as the outer configurations were not imitated. A patent, on the contrary, can scarcely ever be said to depend on shape; supposing a patent be taken for any improved construction of lamp—such, for instance, as an improved means of raising the oil from the stem or pillar of a table lamp,—the patent would be equally infringed whether the external figure or design be retained or not so long as the means of raising the oil were preserved."

Heela Foundry Co. v. Walker, Hunter & Co.

An instructive case is a case before the Lords of the *Heela Foundry Co.* v. *Walker, Hunter & Co.* (*b*). The respondents, Walker & Co., registered under the Act of 1883 a drawing or design of a kitchen-range fire-door. They described it as "a range fire-door with moulding on top; moulding forming front of range; SHAPE to be registered." The fire-door was intended to fit into the range, and the moulding on the top corresponded to and ran flush with the moulding on the front of the hob of the range when the door was closed. The appellant's fire-door projected over the face of their range, and had a moulding on

(*a*) *Cooper* v. *Symington* (1893), 10 R. P. C. 261.
(*b*) (1889), 14 App. Cas. [illegible] Rep. Pat. Cas. 71; 6 Rep. Pat. Cas. 554; *Harper & Co.* v. *Wright* (1899), 1 C[illegible] (2.

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the top with fitted ends, which projected about three-eighths of an inch in front of the moulding on the range hob. It also had a handle, which the respondents' door had not. The feature of both doors was that the moulding on each accomplished the useful purpose of closing the space between the hob-plate and the top of the fire-box, and thus excluded the cold air. It was held by the House of Lords, first, that the Court of Session (*a*) in considering whether there had been an infringement of the copyright in the design for the shape of the fire-door were wrong in taking into account the question whether the defenders' design accomplished the same useful object (*i.e.*, that of excluding cold air) as the design of the pursuers; but secondly, affirming the decision of the Court of Session, that there had been in fact an obvious imitation of the registered design, and therefore an infringement of the copyright. Lord Herschell in his judgment well points out what is protected by the Act and what not. He says: "Under the Designs part of the Act of 1883, I do not think the object which the designer has in view in adopting the particular shape or the useful purpose which the shape is intended to serve, or does serve, ought to be regarded in considering what is the design protected. The scheme of this part of the Act is entirely different from that relating to patents for inventions, where the object attained by the invention for which the patent is granted is, of course, very material to the inquiry what is its subject-matter, and whether there has been an infringement. I cannot agree, therefore, that the registration was claimed or could be claimed 'not for the particular moulding,' but for the form given by placing 'any suitable moulding' upon a fire-door in the described position, or that a privilege was granted 'for putting a moulding upon a fire-door in such a manner as to accomplish' a particular object. I think the protection was granted for the shape and for that alone, and that in such a case, when an infringement is alleged, the only question is, whether the shape of that which is impeached is the same, or whether the one is an obvious imitation of the other, without reference to whether it does or does not accomplish the same useful end. I quite agree with what was said by Lord Shand in *Walker* v. *Falkirk Iron Co.* (*b*), that 'the Act in this branch gives protection only to the shape or configuration or to the design for the shape or configuration in such a case as the present. The result of such protection may be, however, to

(*a*) (1888), 15 Court Sess. Cas., 4th Series, 660.
(*b*) (1887), 14 Court Sess. Cas. 4th Ser. at p. 1081; 4 Rep. Pat. Cas. 390.

secure important advantages such as attend a mechanical contrivance, if those advantages should be the result directly or indirectly of the shape or configuration adopted.' But this is a mere incident. If such advantages are obtained, it is only because no shape not substantially the same, and which is therefore not an infringement, will achieve the same end. The test of infringement must always be whether the shape is or is not the same. If it be, then the exclusive privilege has been infringed even though the same object be not accomplished; if it be not, then, though the object be accomplished, there has been no infringement. In the present case, for example, by a very slight deviation from the design, which would scarcely be apparent, the air might be admitted to the fire. I do not think that a person making such a fire-door could successfully answer the complaint that he has infringed the right of the proprietor of the design by showing that, when applied to a range, it would not exclude the air."

Design may be registered even if patentable.

In a former edition of this work it was stated that it was the received opinion that under the old Act, 6 & 7 Vict. c. 65, designs might be registered the subjects of which could in many cases have obtained a patent (*a*). This passage was cited with approval in *Walker, Hunter & Co.* v. *Falkirk Iron Co.* (*b*), by Lord Shand, who expressed his opinion that this was still the case under the present Act; and Mr. Justice Byrne has recently decided that a design may at one and the same time be the subject of a patent and a design (*c*).

Classification.

The classification of articles of manufacture and substances as given in the Rules, 1890, is as follows:

Classes.

1. Articles composed wholly or chiefly of metal, not included in class 2.
2. Jewellery.
3. Articles composed wholly or chiefly of wood, bone, ivory, papier-mâché, or other solid substances not included in other classes.
4. Articles composed wholly or chiefly of glass, earthenware or porcelain, bricks, tiles or cement.
5. Articles composed wholly or chiefly of paper (except hangings).
6. Articles composed wholly or chiefly of leather, including bookbinding of all materials.

(*a*) *Roger* v. *Driver* (1850), 16 Q. B. 108; see *Millingen* v. *Picken* (1845), 1 C. B. 799, 812.

(*b*) (1887), 14 Court Sess. Cas. 4th Ser. at p. 1081: 4 Rep. Pat. Cas. 390.

(*c*) *Werner Motor Co.* v. *Gamage* (1904), 1 Ch. 264.

7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths and oil-cloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods (*a*).
14. Printed or woven designs on handkerchiefs and shawls (*a*).

According to the terms of section 47 of the Act of 1883 to entitle a design to be registered it must be—

(1) New and original (*b*), and

(2) Not previously published in the United Kingdom.

(1) *New or original.*

Rule as to what is a proper subject of registration.

A design must be either new or original and there may be a distinction between "new" and "original." Every design which is original is new, but every design which is new is not necessarily original (*c*).

It may be laid down generally that a design is not a proper subject of copyright unless there is a clearly marked difference, involving substantial novelty between it and any design previously in use. Therefore where the plaintiffs registered a collar combining three characteristics which it was admitted had existed independently in other collars, but were said to have been never previously combined, and it appeared that these characteristics had appeared in combination before, though in proportions different to those in which they appeared in the registered design, the registration was ordered to be expunged (*d*).

In this case the law was clearly stated by Lord Justice Baggallay thus: "In order to justify the registration of a design, especially with reference to such matters as collars

(*a*) *Hottersall* v. *Moore* (1892), 9 Rep. Pat. Cas. 27.

(*b*) *Harden Star Hand Grenade Fire Extinguisher Co. Trade Mark and Designs* (1886), 3 Rep. Pat. Cas. 132.

(*c*) *Per* Chitty, L.J., *re Rollason's Design* (1898), 1 Ch. 237, 248.

(*d*) *Le May* v. *Welch* (1884), 28 Ch. D. 24; 54 L. J. Ch. 279; 33 W. R. 33; 51 L. T. (N.S.) 867; *Bach's Case* (1889), 42 Ch. Div. 661; 6 Rep. Pat. Cas. 376; *Hothersall* v. *Moore* (1892), 9 Rep. Pat. Cas. 27; *Heath* v. *Rollason* (1898), A. C. 499. In *Tyler* v. *Sharpe* (1893), 11 R. P. C. 35, Mr. Justice Romer seems to have considered that the commercial success of a design was evidence of its novelty, but it would seem rather to be evidence of its utility, which is immaterial, *ante* p. 410, note (*b*).

and other articles of dress which are in constant and daily use, there must, according to my view of the case, be some clearly marked and defined difference between that which is to be registered as a new design and that which has gone before. If the difference of half an inch in the placing of a stud, or any other similarly trifling difference from previous designs, were to be taken as justifying registration of a design for a collar, no one could have a collar made in his own house by his servants without running the risk of infringing some registered design. It would be oppressive in the extreme if any trifling change in the shape of such an article as this would justify the registration of the design so as to preclude all the rest of the world from making an article of the same or like form." The other members of the Court of Appeal concurred, Lord Justice Bowen saying: "In order to enable the respondents to maintain the registration, they must be, or claim to be, the proprietors of a new or original design. In the present case is there any new or original design shown by this drawing? In considering whether the design is new or original we must remember, in the first place, that we are dealing with a design which purports to found itself on shape, and to deal with outline; and secondly, that we are considering the question with reference to an article of dress of the very simplest and least complicated kind, an article of dress which may well vary in form in every town in England, and in every year in which collars are worn. We must not allow industry to be oppressed. It is not every mere difference of cut, every change of outline, every change of length or breadth of configuration in a simple and most familiar article of dress like this, which constitutes novelty of design. . . . . There must be, not a mere novelty of outline, but a substantial novelty in the design having regard to the nature of the article" (*a*).

Similarly a design for a scarf or tie, there being no substantial difference between it and a previous tie, except the introduction of a pleat, was held not capable of registration, since to allow it to be registered would be to hold that the difference of a few stitches constituted a proper subject for registration (*b*).

A new treatment of old patterns may, however, be a new and original design, and as such would be a proper subject of registration.

An original combination a proper subject of registration.

(*a*) *Le May* v. *Welch* (1884), 28 Ch. D. 24, 31; *Cooper* v. *Symington* (1893), 10 R. P. C. 264.

(*b*) *Smith* v. *Hope Bros.* (1889), 6 Rep. Pat. Cas. 200; *Sherwood's Design* (1892), 9 Rep. Pat. Cas. 268; *re Morton's Design* (1900), 17 R. P. C. 117, the shank of a sleeve link.

This was determined in the Exchequer Chamber, on appeal from the Court of Exchequer, in the case of *Harrison* v. *Taylor* (*a*). The plaintiff registered, under the 5 & 6 Vict, c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called "The Honeycomb Pattern," and it consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe on a small honeycomb ground. Neither the large honeycomb nor the small honeycomb was new, but they had never been used in combination before the plaintiff registered his design. Other fabrics had been woven with a similar combination of a large and small pattern. In an action against the defendant for infringing the plaintiff's copyright it was held that the plaintiff's design was a "new and original design" within the meaning of the 5 & 6 Vict. c. 100.

But where four old designs were respectively applied to three ribbons and to a button, and the three ribbons were then united by the button so as to form a badge, it was held that such union did not amount to a new design within the above statute (*b*). So a design for a double card basket formed by the combination of two baskets, admittedly old in design, was held not entitled to protection (*c*), but the combination of a bassinette and mailcart was held to be well registered (*d*).

A. registered as "a design" within class 12, sect. 3, of the 5 & 6 Vict. c, 100, a pattern of a woven fabric. He gave no written description of his claim. The design consisted of six pointed stars on an Albert chain arranged in a particular manner, and shaded, and he claimed "the particular collocation of the shaded and borrowed stars upon the ornamental chain surface, as shown in the registered pattern, thus forming together the ornamentation of the woven fabric." B. slightly altered the combination, but not so as to affect the general appearance of the pattern, and it was adjudged that this was an infringement of the pattern registered (*e*).

(*a*) (1859), 3 H. & N. 301, reversed (Ex. Ch.) 4 H. & N. 815; 29 L. J. (Exch.) 3; 5 Jur. (N.S.) 1219; *Sherwood* v. *Decorative Art Tile Co.* (1887), 4 Rep. Pat. Cas. 207.

(*b*) *Mullaney* v. *Stevens* (1861), 10 L. T. 190. A claim to a monopoly in a design registered under the 6 & 7 Vict. c. 65, for the shape or configuration of the body of a four-wheel dog-cart was rejected, because the design consisted only of an arch in the fore part of the carriage, made a little higher than that in ordinary use, to permit the convenience of larger fore-wheels: *Windover* v. *Smith* (1863), 11 W. R. 323; 32 Beav. 200; 32 L. J. (Ch.) 561: 9 Jur. (N.S.) 397; 7 L. T. (N.S.) 776.

(*c*) *Lazarus* v. *Charles* (1873), 16 Eq. 117: 42 L. J. Ch. 507.

(*d*) *Rivett* v. *Grimshaw* (1894), 11 R. P. C. 351.

(*e*) *M'Crea* v. *Holdsworth* (1870), 23 L. T. 444: L. R. 6 Ch. 419: 2 H. L. 380.

In *Reg.* v. *Firman* (*a*) it was decided that the result of simultaneously applying two old and known designs to the ornamenting of a button might be a new and original combination to be protected as a design; but the result of the combination to be protected as a "design" must be one design and not a multiplicity of designs (*b*).

But the combination must be one design and not a multiplicity.

Therefore where a claim was made in respect of a design of a shawl, and it was contended that there were five points in respect of which the shawl was new and entitled to protection —first a reversible cloth, with the two sides of different texture and colours; secondly, a scollop pattern in parts of the shawl; thirdly, a particular border round the shawl; fourthly, a particular configuration of the corners of the shawl; fifthly, a newly invented fringe to surround the shawl; and the evidence clearly showed that all these five points, or "designs," had been in public use and had been applied to shawls before the registration of the plaintiff's shawl, but that the combination of them in the plaintiff's shawl was new; the court held that such a combination was not a "design" within the meaning of the Act of Parliament (*c*).

Hothersall v. *Moore.*

In another case the plaintiff alleged that his design as a "combination" was new and original, and not previously published in the United Kingdom; that is, he alleged that the use of a red-coloured border on a body of yellow chamois-leather cloth was entirely new, and constituted a design within the Act, and the mode in which he arrived at the design was not by drawing a pictorial production, but in this way. He took a piece of an old pattern (No. 20) long used for dusters, and directed Mr. F., who was the manufacturer of goods ordered by him, to work out the *border* of this duster (No. 20) in red; and he then took a duster (No. 19) and took from that a pattern of the so-called chamois-leather cloth, and directed Mr. F. to work that out as the *body* of a duster with the borders like No. 20, only worked out in red. The border in No. 20 was a very old and common border, and that the chamois-leather cloth was known at the time as a material was clear from the fact that the plaintiff alleged that he took the pattern for the body of No. 2*a* (the design in question) from No. 19, and when the body of No. 2*a* was applied to a square forming part of the border of No. 19 this was apparent to the eye: the two things were, in fact, identical. Upon these facts Vice-Chancellor Bristowe said: "He (the plaintiff) takes an old

(*a*) Cited in *Harrison* v. *Taylor* (1859), 3 H. & N. 304.
(*b*) *Norton* v. *Nicholls* (1859), 5 Jur. (N.S.) 1202, 1205.
(*c*) *Ib.*

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border from a well-known duster, and he applies that well-known border to a previously existing fabric. The border had been used over and over again; the fabric was not new. There is nothing in the slightest degree novel or original in this border; it is a mere stripe of colour, and the material is already in existence, though of recent manufacture. What was there then 'new or original' in this to constitute a design? I admit the difficulty of stating with precision what is a design within the Act; and many judges have previously found that difficulty, but, independently of authority on the subject, I cannot bring myself to the conclusion that there was in the application of the border of the exhibit No. 20 (which was a common border) to a material forming part of No. 19, enough to constitute a design by way of combination within the meaning of the Act" (*a*).

And it is not material that the plaintiff has independently invented the design if, in fact, it has been previously published. Thus where S. in 1887 registered a design for fire-screens, constructed of three palm-leaf fans to hold a flower-pot, and in 1889 brought an action for infringement. The defendants alleged that the design was not new or original, and called evidence to show that a similar design had been previously published. And it was held that, even admitting that the design was good subject-matter, which was doubted, and although the judge was satisfied that the plaintiff had independently invented the design, the evidence showed that it had been used before the plaintiff's registration, and the action was dismissed with costs. The design was ordered to be expunged from the register (*b*).

Novel application.

But it is not necessary that a design should be novel in its subject-matter if its application to some article of manufacture be novel. In *Adams* v. *Clementson* (*c*) the design consisted of a portrait of General Martinez de Campos, Captain-General of Cuba, copied from a photograph which had been sent to the plaintiff from Cuba, and which had been applied by him to plates and other articles of earthenware. An injunction was refused to restrain the defendant from supplying earthenware with a portrait of the general copied from a similar photograph furnished to him.

Saunders v. *Wiel*.

The case last cited was, however, doubted by the Court of Appeal in the important case of *Saunders* v. *Wiel* (*d*). There

(*a*) *Hathersall* v. *Moore* (1892), 9 Rep. Pat. Cas. 27.
(*b*) *Smout* v. *Slaymaker & Co.* (1890), 7 Rep. Pat. Cas. 90.
(*c*) (1879), 12 Ch. D. 714; 27 W. R. 379.
(*d*) (1893), 1 Q. B. 470.

the plaintiffs registered as a design in Class I. (namely, articles comprised wholly or partly of metal) a representation of Westminster Abbey intended to be applied to the handles of spoons and forks. The original design was made by an artist employed by the plaintiffs, from a photograph of the Abbey. The defendant made and sold metal spoons bearing on their handles a similar representation of the Abbey, and the court gave judgment for the plaintiffs in an action for infringement. "What we have to consider," said Lindley, L.J., "is whether this registered design—for a design of some sort, of course, it is—is a design applicable for the pattern and for the shape to things in Class I., and in particular to forks and spoons, and whether it is a new or original design not previously published in the United Kingdom. Why is it not? Has such a design applicable to metals ever been seen before? If you ask that, you are told this: 'Yes, if you mean a view of public buildings, or if you mean a view of cathedrals and churches, they are common enough; therefore, there is no novelty in the 'idea.' But if you ask a little closer, whether anybody has previously taken this particular aspect of Westminster Abbey, and used it as a design applicable to things in Class I., or to any things like it, the answer is, 'No, that is new, and never has been published before.' That answer seems to me to bring the plaintiff's case within the Act of Parliament; and I think the answer to the argument addressed by the defendant is this: he says the Abbey is not a design within the meaning of this Act of Parliament. In one sense, of course, it is a very valuable design. If an architect was thinking about building an abbey, having Westminster Abbey before him, it would be a very valuable design, but it is not a design within section 60 until you come to apply it, as a design, to some article of manufacture, and, therefore, you cannot say that, abstractly and as a general proposition, Westminster Abbey is a design. Then it is said the photograph is a design. The answer is, the photograph, whatever it may be in other Acts, is not a design within this Act until you apply it to something. The plaintiffs are not infringing the copyright of the photographer, or, if they are, we need not discuss that. What they are doing is this: they are making precisely the same use of the photograph which they might have made of the Abbey itself, and they are doing nothing more than taking that which anybody can see, if he chooses to go down to Westminster Abbey, and applying what is there to be seen for a particular purpose. They bring themselves within both s. 60 and s. 47." The Lord Justice

then goes on to point out that *Adams* v. *Clementson* was decided under the earlier Act of 5 & 6 Vict. c. 100, s. 3, and remarks: "I cannot help thinking that the Vice-Chancellor there, even under the old Act, slipped into an erroneous view, and took 'design' rather as an abstract design instead of a design applicable to particular modes of manufacture."

So a design for an upright hexagonal metal stove, the sides of which had the representation in metal-work of a church window, of a particular style of architecture, with tracery above and below, was held to be properly registered under the Act (*a*). On the other hand, when C. registered a design for a "Lamp for electric lighting applicable for its shape," which was, in fact, a design for a lamp-shade, consisting of a reflecting screen which had been erroneously used for gas lights, and a ventilating top not materially differing from those which had been used before for gas, except that a chimney which was required for gas lights, but not for electric lights, was omitted, it was held that there was no such originality or novelty in the design as to make it a proper subject of registration (*b*).

A design already registered in one class cannot be registered in other classes.

A design already registered in respect of one class cannot be registered as new or original in respect of other classes if the designs are to be used for similar purposes (*c*).

Thus, where the applicant registered a design in Class 5 in Schedule 3 of the Designs Rules, 1883, viz., "Articles composed wholly or partly of paper (except hangings)," for the pattern and shape of a flower candle-shade in imitation of a chrysanthemum, and had since the date of registration been selling candle-shades made according to the design, the respondents registered in Class 12, of the above schedule, viz, "goods not included in other classes," a design for a candle-shade consisting of an imitation chrysanthemum, and had since been selling candle-shades made according to that design of rag and paper combined, and similar to those made by the applicant, the court being of opinion that the two designs were substantially identical, and that applicant was a person aggrieved within section 90 of the Act, regarded the only question calling for a report to be whether having regard to the prior registration of the applicant's design in Class 5, the respondents could register their design in Class 12, that being for a different class of goods. Mr. Justice Chitty referring to the respondents' argument, said: "That argument comes to this, that where

(*a*) *Harper & Co.* v. *Wright* (1896), 1 Ch. 142.
(*b*) *Re Clarke's Design* (1896) 2 Ch. 38.
(*c*) *Re Read & Greswell's Design* (1889), 42 Ch. Div. 260; 58 L. J. Ch. 624; 61 L. T. 450; 6 Rep. Pat. Cas. 471.

a new and original design is registered in one class, a rival designer is at liberty to take the design and transfer it bodily to another class, and register it in that class, or if it be on the register, may maintain it there. I do not think this argument can be sustained. No doubt the copyright in a design conferred by section 60 of the Act, is limited to the goods in the class or classes in which the design is registered, and this is clearly the case, for under section 58, which gives a special remedy by penalty for the infringement of a registered design, the registered proprietor cannot proceed against the infringer in respect of goods outside the class in which the design is registered, and for this reason, that the person registering having knowingly confined the registration to one class of goods, has by so doing given notice to all the world that they are at liberty to use the design for goods not included in the class or classes, for a person may register a design in more than one class. It is on this, that the respondents' argument is based. But can the legislature have had this intention?

"I suggested the case of a design registered for jewellery, and another trader finding this to be so, and that articles marked with such design were being put on the market, and people were becoming generally acquainted with the design, taking this design and registering it in some other class of goods, such as glass (Class 4), or lace (Class 9), a thing which in the case of many designs might easily be done. I am satisfied that it was not the intention of the Legislature to allow this to be done. The answer to the argument is to be found really in section 47 of the Act, where the words used are: 'Any new or original design not previously published in the United Kingdom.' To be capable of being registered a design must be 'new or original' in fact, and not, as is suggested, 'new or original' as to some particular class of goods. It cannot be said to be new and original if it is already being applied to articles of an analogous character."

Unless to be used for different purpose.

A principle which is frequently overlooked is that though a design may be registered in one class for a particular purpose, it may be used or applied to another class for a *different purpose*, whereas it could not be applied to another class for the *same purpose*. Thus in the case in the Scotch Courts of *Walker, Hunter & Co.* v. *Falkirk Iron Co.* (*a*), a design used for cabinet-doors and other doors was held to be well registered as applied to range fire doors. But where it was attempted to establish the principle that the design in one material might be applied

(*a*) (1887), 4 Rep. Pat. Cas. 390.

not to a different thing or to a different purpose, but the same purpose as the previously registered design, there the court held the registration to be bad. So too in *Re Bach's Design* (*a*). Bach, a lamp manufacturer, in 1886 registered in Class 4, the design of a shade in the form of a rose made of china or porcelain for what was called a fairy lamp; he in 1888 brought an action in the Queen's Bench Division against the Army and Navy Co-operative Society for damages for infringement, and for an injunction to restrain them from infringing the copyright in his design. The defence was that it was not a new design, and in 1888 the Society moved in the Chancery Division to have the Register of Designs rectified by removing therefrom the said design on the ground that it was neither new nor original. It appeared that other designs for shades in the form of roses made of linen had previously been registered, but the case principally relied upon was that one Reed in 1886 had registered under Class 12, a linen shade in the shape of a rose for candles, also adapted for lamps, and that these shades had been sold by Reed himself, and by the Army and Navy Co-operative Society directly after the registration. Evidence was also given of lamp-shades of china in the form of a tulip having been sold previously to the date of Bach's registration. Mr. Justice Kekewich held that though the materials were different, there was no novelty in the china design, which must therefore be removed from the register.

He said, "It is necessary in order to support the design that it should be new and original. To my mind it is extremely important, if one can, and as far as one can, to base a decision in a case of this kind on some principle, and I find a principle to my hand in the judgment of Lord Justice Fry, in *Le May* v. *Welch* (*b*), in which he makes this remark: 'The meaning of the words "novel or original" is this, that the design must either be substantially novel or substantially original, having regard to the nature and character of the subject-matter to which it is to be applied.' 'Subject-matter,' as there used by the Lord Justice, does not mean the material, but the purpose of the design, and the purpose here is precisely the same in each case; that is to say, the designer in each desired to invent or produce a lamp-shade. So that, as regards the subject-matter, they were proceeding on identical lines.

"Now, that being the nature and character of the subject-matter, what is there substantially new or substantially original?

(*a*) (1887), 42 Ch. D. 661; 6 Rep. Pat. Cas. 376; 38 W. R. 174; *re Clarke's Design* (1896), 2 Ch. 38.

(*b*) 28 Ch. D. 24.

I will dismiss the second alternative, and take the substantially new. If I appeal to my eye, and look at the specimens before me of the roses of Mr. Bach, there is some distinction seen between them and those of Mr. Reed, perhaps not more than one would expect to result from difference of material, the one being more plastic, the other less so; the one necessarily taking a hard form, and the other lending itself to folds and producing a softer effect. But I think I am entitled to look, and I certainly do look, at the design which was actually registered by Mr. Bach, which I have before me, and taking that, and looking from that to Mr. Reed's production, there seems to be so great a similarity that it is difficult to distinguish one from the other. There, in Mr. Bach's registered design, the hardness of his material is not shown, and he has multiplied the leaves of the rose, and placed them in such positions that they really are precisely the same as those of Mr. Reed. That being so, why should I not hold that the design is the same? It seems to me as a matter of eyesight, that the design is precisely the same. . . . There are many cases in the books in which the court has upheld registration, as for cotton goods in one class, of a design which had already been applied to goods of a different character altogether in another class, and I do not think it necessary to hold or even to intimate that possibly the design of a rose may not be registered for some other entirely different purpose, that is to say, with reference to some other quality of goods in a different class. But the Act does not say, and I think, cannot have intended to say, that by selecting a different class, a man may register as applied to the same things, say lamp-shades, what has already been registered with reference to that thing, lamp-shades, merely varying the material in which the lamp-shades have been made."

Alterations in old design.

But comparatively slight alterations from an old design may sometimes entitle a new design to registration. Thus, R. registered a design for coffin plates. The drawing showed a set of irregular four-sided coffin plates, with leaf-shaped projections at the corners, each of which contained a shell-pattern ornamentation with double lines or rims running round the inner edges of the plate and enclosing the centre of it, and also double lines enclosing the shells, and in the view taken by the court the drawing indicated that the plate had a sunken centre. S. had previously registered a design of a somewhat similar character, with shells at the corners, but without the inner double lines or rims enclosing the centre and the shells; and in the view taken by the court, his

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drawing indicated a flat centre. It was held that R.'s design was new and original (*a*). But the substitution of a flange to a lamp, in lieu of slip-fittings, was held not to make the design a new one (*b*).

(2.) *Not previously published in the United Kingdom.*

What is publication?

The disclosure of a design to a partner or any necessary agent confidentially is not a publication. Thus, where the inventor of a design for a writing-table, previously to registering it and while perfecting it, consulted a person with whom he had business relations as to the design, and sent him a sample for his inspection and opinion, it was held that there had been no previous publication (*c*). But where the inventor of a design (who was a foreign manufacturer) showed it to his sole agent in the United Kingdom, and he in turn showed it to two customers, who gave orders (whether to be executed before or after registration did not appear), it was held that there had been a publication (*d*), though the disclosure to the agent would not have been such, since he had an interest in the sale of the design (*e*). The question was raised, but not decided, in *re Gresswell's Design* (*f*), whether registration alone of a design would be publication; but, semble, it would not.

Exhibiting at exhibitions.

By section 57 of the Act of 1883, it was provided that the exhibition of a design at an industrial or international exhibition shall not prevent or invalidate the registration of the design, provided the exhibitor gives to the Comptroller seven days' (*g*) notice in writing of his intention to exhibit the design and that he applies for registration within six months from the date of the opening of the exhibition.

(*a*) *Re Rollason's Design* (1898), 1 Ch. 237; S. C. on appeal *sub nom*; *Heath & Sons* v. *Rollason* (1898), A. C. 499.
(*b*) *Re Sherwood's Design* (1892), 9 R. P. C. 268.
(*c*) *Heinrich* v. *Bastendorff* (1893), 10 R. P. C. 160: *Westley Richards & Co.* v. *Perkes*, *ib.* 181.
(*d*) *Blank* v. *Footman* (1889), 39 Ch. Div. 678; 5 Rep. Pat. Cas. 653; 57 L. J Ch. 909; 36 W. R. 921; 59 L. T. 567; *Hunt* v. *Stevens*, W. N. (1878), p. 79 *Winfield & Son* v. *Snow Brothers* (1891), 8 Rep. Pat. Cas. 15.
(*e*) See *Humpherson* v. *Syer* (1887), 4 Rep. Pat. Cas. 184, 407.
(*f*) (1889), 6 R. P. C. 473.
(*g*) See R. 36 of Designs Rules, 1890.

CHAPTER II.

REGISTRATION OF DESIGNS.

The Register of Designs.

THE Act of 1883 provides that a book called the Register of Designs shall be kept at the Patent Office, in which shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed, and that this register shall be *prima facie* evidence of any matters by the Act directed or authorized to be entered therein.

Notice of trusts need not be entered.

Notices of trusts are not to be entered on the register (*a*), but this provision and the Patent Rules only refer to the exclusion from the register of simple notices of trusts and not documents affecting the proprietorship which, by creating trusts or otherwise, and consequently equitable assignments of a design or a share in a design, may be entered on the register as documents affecting the proprietorship (*b*). The Comptroller may refuse to register any design of which the use would in his opinion be contrary to law or morality (*c*).

Inspection of register.

The register is to be at all times open to the inspection of the public, subject to prescribed regulations; and certified copies sealed with the seal of the Patent Office of any entry are to be given to any person requiring the same on payment of the prescribed fee (*d*).

Printed or written copies or extracts purporting to be certified by the Comptroller and sealed with the seal of the Patent Office, are to be admitted in evidence without further proof or production of the originals (*e*).

Inspection of registered designs.

All designs of which the copyright has expired may be inspected at the Patent Office on the payment of the proper fee and on production of the number of the design, and copies may be taken; but *no* design, the copyright of which is existing, is, in general, open to inspection except to the

(*a*) S. 85. (*b*) See *Stewart* v. *Casey*, 9 Rep. Pat. Cas. 9; [1892] 1 Ch. 104.
(*c*) S. 86. (*d*) S. 88. Rules 33 and 34 of 1890. (*e*) S. 89.

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proprietor or a person authorized in writing by him, or a person authorized by the Comptroller or by the court, and furnishing such information as may enable the Comptroller to identify the design, nor except in the presence of the Comptroller or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection is not to be entitled to take any copy of the design (*a*). The Act of 51 & 52 Vict. c. 50, s. 6, provides, however, that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration is to be entitled to inspect the design so registered.

The Comptroller may, on receipt of the prescribed fee, make searches among the designs registered at the office, and inform any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with or an obvious imitation of any registered design applied to such goods of which the copyright is still subsisting (*b*).

False entries in register.

Any person making or causing to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry therein, or producing or tendering or causing to be produced or tendered in evidence any such writing knowing the entry or writing to be false, is declared to be guilty of a misdemeanor (*c*).

Who may register.

An application to register must be in the prescribed form (*d*), and may be made by any person claiming to be the proprietor of the design or by any agent duly authorized on his behalf (*e*).

Any of the following persons may be considered the proprietor of copyright and may register under the Act.

1. The author of a new design, unless he has executed the work on behalf of another person for a good or valuable consideration.

2. Where the work is executed on behalf of another person for a good or valuable consideration, the person on whose behalf it is executed.

Thus, where a person who is engaged in business has a person in his employ who in the course of his employment makes a design which is new or original, the design will

(*a*) S. 52.

(*b*) Designs Rules, 1890, r. 35. A letter giving the result of this search is not evidence; *Smith* v. *Hope Bros.* (1889), 6 R. P. C. 204.

(*c*) Sect. 93, Act of 1883.

(*d*) See the forms in Schedules to the Rules of 1890 and for lace designs, Rules of 1893. App. F. *post*.

(*e*) But the Comptroller is not bound to recognise an agent whose name has been erased from the Register of Patent Agents. See Rules of 1898.

become the property of the master by virtue of the relation which exists between them, and the master will be entitled to register the design (*a*). And a company incorporated under the Companies Acts may be the proprietors of the copyright of a design invented by one in their employ.

3. Every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any article or substance either exclusively of any other person or not.

4. Every person on whom the property in such design or such right to the application thereof may devolve; but the persons entitled to copyright under heads 3 and 4 will only be proprietors in respect of and to the extent of the rights so acquired (*b*).

Licensees, &c.

A person who has a partial assignment of the design or an assignment of the right to apply it for the whole period of protection, or a licensee who has the right to make articles in accordance with the design for the whole or a limited term may register; but an agreement assigning an exclusive right to sell, unless it confers a right to manufacture the articles to which the design is applicable, does not entitle the assignee to register (*c*).

A body corporate may be registered as proprietor by its corporate name (*d*).

Where A. who was acting as the sole agent and consignee in the United Kingdom of toys manufactured in the United States by an American company, and consigned to him by them, registered in his own name the designs in accordance with which some of such toys were manufactured; and the company had authorized him to register the designs in his own name, but had not assigned to him the designs or the right to apply them to goods, the only arrangement between them and A. being that A. should sell in the United Kingdom goods manufactured and consigned to him by the company; it was held that A. was not the proprietor of the designs within the 61st section of the Act of 1883, and that the registration in his name was therefore wrongful and must be expunged (*e*).

How applicant's notices &c., to be made or sent.

Any application, notice or other document authorised or required to be left, made or given at the Patent Office or to

(*a*) *Lazarus* v. *Charles* (1873), 16 Eq. 117–123. (*b*) S. 61.
(*c*) *Jewitt* v. *Eckhardt* (1878), 8 Ch. Div. 404–409; *Re Guiterman's Registered Design* (1886), 55 L. J. Ch. 309, p. 310; *Woolley* v. *Broad* (1892), 1 Q. B. 806.
(*d*) Rule 26. Foreigners may register, *re Carez* (1889), 6 R. P. C. 552.
(*e*) *In re Guiterman's Registered Designs* (1886), 55 L. J. Ch. 309.

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the Comptroller or to any other person under the Act, may be sent by a prepaid letter through the post, and if so sent is to be deemed to have been left, made or given at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving service or sending, it is sufficient to prove that the letter was properly addressed and put into the post (*a*).

Statement of nature of design.

The form of application must contain the name, address, and description of the individual or firm making the application, and must be signed by the applicant or his duly authorized agent (*b*). It must also contain a statement of the nature of the design and the class or classes of goods in which the applicant desires that the design be registered (*c*).

The statement of the nature of the design is not required to be like the specification of a patent (*d*), but should be sufficiently full and explicit to make the design intelligible to enable the Comptroller to give the information required to be given by him by section 53, and to fully explain all matters pertinent to the registration which cannot be gathered from looking at the representation or specimen of the design filed with the application.

The same design may be registered in one or more of the classes according as it is intended to be employed in one or more species of manufacture, but a separate fee must be paid on account of each separate class, and all such registrations must be made at the same time.

It might sometimes be worth while to register in more than one class to prevent vulgarization, but as publication in one class is publication in all, this must be done as before mentioned at the same time, or at least before any form of the pattern or design be in circulation.

In case of doubt as to the class in which a design ought to be registered, the Comptroller may determine the question (*e*), or in a case of difficulty apply to either of the law officers of the Crown for directions (*f*).

An action was brought to restrain the infringement of a design registered in Class 13 ("printed or woven designs on textile piece goods"), the certificate of registration identifying it by having attached thereto a cutting of a material known as

(*a*) S. 97, Act 1883.
(*b*) See Instructions to persons who wish to register Designs. Appendix F, *post*.
(*c*) Sect. 47 (3).
(*d*) See *Holdsworth* v. *McCrae* (1867), L. R. 2 H. L. 385. In America the practice is different, and a specification is required. In *Demartial* v. *Booth* (1892), 9 R. P. C. 499, the American specification was given in evidence, no party objecting.
(*e*) Sect. 47 (5). (*f*) Sect. 95.

"chamois leather cloth." The goods as sold by the plaintiff were woven in pieces consisting of twelve squares marked off, one from the other by threads woven across the piece, each square being intended to be cut from the rest and to be used as a duster; the cutting attached to the certificate was taken from the middle of one of these squares, and showed a plain yellow centre and a border at each side, consisting of a red stripe about one inch in width, with two narrow yellow lines running down the middle. The defendant alleged amongst other things that dusters, though woven in lengths consisting of sets of twelve, were comprised in Class 14 ("printed or woven designs for handkerchiefs or shawls"), and not in Class 13, and it was held the defendant was right, Vice-Chancellor Bristowe saying, "I have come to the conclusion that there is a substantial difference between the Classes, No. 13 & No. 14, in the Rules of 1883, and that 'piece goods' are by the order in question—that is, the order under the Act of 1883—intended to denote goods commonly known as 'piece goods,' measured by the piece and sold by the piece, and should be classed under No. 13, and that goods which though woven in the piece are subdivided in patterns by cross lines or other demarcations showing that they would be sold, not by measurement, but by number, as per dozen, fall within the class of handkerchiefs and shawls sought to be registered under Class 14; but that to avoid any difficulty the person desiring to register, may register under both classes, and so ensure his desired protection. Now the plaintiff has not done this at the time. He has registered under Class 13. In my judgment that might, if the design were capable of registration, protect him for the sale of such goods as the long piece worked out as a piece, but it would be of no avail to protect him for such goods as No. 22" (*a*).

Correction of clerical errors.

By the 91st section of the Act of 1883, the Comptroller may, on request in writing accompanied by the prescribed fee, correct any clerical error in or in connection with an application for registration of a design, or correct any clerical error in the name, style, or address of the registered proprietor, and by the 24th section of the Act of 1888, may permit an applicant for registration to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design to be registered (*b*).

The application must be accompanied either—

(*a*) *Hothersall* v. *Moore* (1892), 9 Rep. Pat. Cas. 38.
(*b*) 51 & 52 Vict. c. 50, s. 24.

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What to accompany application.

(*a*) By a sketch or drawing, or
(*b*) By three exactly similar drawings, photographs, or tracings of the design, or
(*c*) By three specimens or exact representations of the design;

and in describing the nature of the design, the applicant must state whether it is applicable for the pattern, or for the shape or configuration of the design, and the means by which it is applicable (*a*).

"Pattern," "shape," or "configuration."

In a case where a design for coffin plates was stated to be "applicable for the pattern," and one of the grounds for asserting novelty was that the centre of the coffin plate was depressed instead of flat, it was argued that this depression was a matter of "shape" and "configuration," and not "pattern." Lord Herschell, in dealing with this argument, said: "My Lords, these words 'applicable for the pattern or for the shape or configuration or for the ornament thereof,' are to be found in the Act only in the interpretation clause. All that section 47 and the following sections deal with is the question of 'design': that is the word used and the only word; but the word 'design' is interpreted by the interpretation clause, section 60. In my opinion, the object of that interpretation clause was to make the word 'design' as extensive as it reasonably ought to be. It was not intended to draw the distinction suggested as a sharp, hard and fast distinction between the design being 'applicable for the pattern' or 'for the shape or configuration' or 'for the ornament.' I do not think you can say that 'pattern,' as it is used in that section, necessarily and always excluded the shape or configuration, and that nothing could be included in 'shape' or 'configuration' which might not fall to be considered under 'pattern'; or again, that the 'ornament thereof' might not be a part of the pattern, and included in certain cases within the word 'pattern'" He then went on to point out that all section 47 required of the applicant was to state "the nature of the design," and that Rule 9 does not purport to insert as a condition that the person registering the design is to be limited to some part of his design or to some effect in his design. To his mind the word "pattern," as used by the applicant in relation to the subject-matter, "would include everything which would go to make up the 'design'" (*b*).

(*a*) Rule 9 of 1890.
(*b*) *Heath* v. *Rollason* (1898), A. C. 499 : cf. *per* Rigby, L.J., *Harper & Co.* v. *Wright* (1896), 1 Ch. 142, 157; *per* Sha ., L.J., *Walker* v. *Falkirk Iron Co.* (1887), 4 R. P. C. 390, 394.

When sketches, drawings, or tracings are furnished they must be fixed, and they, as well as the application itself, must be written, printed, copied or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than one inch and a half on the left hand part thereof, and the signatures of the applicants or agents must be written in a large and legible hand. The Comptroller has, however, power in any particular case to vary the requirements of this rule if he thinks fit (*a*).

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs must be furnished (*b*).

The Comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records (*c*).

Certificate of registration.

The Comptroller on receipt of an application for registration is to send to the applicant an acknowledgment, and if he determines to register, he is to send the applicant a certificate of registration sealed with the seal of the Patent Office (*d*).

Right of applicant to be heard before adverse decision.

No discretionary power given to the Comptroller may be exercised adversely to an applicant for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

By the rules the Comptroller is to give the applicant ten days' notice of the time when he may be heard personally or by his agent before the Comptroller, and within five days from the delivery of such notice in the ordinary course of post, the applicant is to notify to the Comptroller whether or not he intends to be heard upon the matter (*e*).

Applicant's right of appeal.

When the Comptroller refuses to register a design, the applicant may appeal to the Board of Trade (*f*), but he must within one month from the date of the decision appealed against, leave at the Patent Office, Designs' Branch, a notice in the prescribed form (*g*).

What to accompany appeal.

The notice must be accompanied by a statement of the ground of appeal and of the applicant's case in support thereof, and a copy of the notice must at the same time be sent by the applicant to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct,

(*a*) Rule 8 of 1890. (*b*) Rule 9. (*c*) Sect. 48 (2).
(*d*) Rule 10. See form of certificate, Schedule II. to Rules of 1890. App.. F, *post*.
(*e*) Sect. 94 and Rules 12 and 13.
(*f*) Sect. 47 (6).
(*g*) See Form in Schedule to Rules of 1890. App. F., *post*.

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of the time and place appointed for the hearing of the appeal has to be given to the Comptroller and applicant (*a*).

Upon the sealing of a certificate of registration, the Comptroller is to cause to be entered in the register of designs, the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day is to be deemed to be the date of registration (*b*).

In the case of the loss of the certificate or in any other case in which the Comptroller deems it expedient, he may grant a copy or copies of the certificate (*c*).

Permissible to register by pattern.

The Designs Act of 1842 did not permit registration by pattern; this was an improvement introduced by the 21 & 22 Vict. c. 70, which declared that the registration of any *pattern* or *portion* of an article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, should be as valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under "The Copyright of Designs Acts." The 48th section of the Act of 1883 allows specimens or exact representations of the design to be furnished instead of copies.

When advisable to do so.

The advisability of registering by specimen, will of course depend upon the nature of the design to be protected. There is a risk either way. There is a risk on the one hand of misdescription of the claim, for though the same nicety is not required in registering patterns or designs, as in describing inventions sought to be protected under the patent laws, yet it is necessary that the party should properly explain the nature of the design he is desirous of protecting, and on the other hand, where the party exercises the option of silence, and merely produces the pattern of his invention, he is exposed to this:—that as by the registration of the sample he has claimed protection in respect of the entirety of what is exhibited on the face of that pattern; if only a part is used in a different combination, he is without the protection which he would otherwise have had (*d*).

When not advisable.

When a piece of manufacture with a design impressed upon it is registered without any explanation or addition in writing, and that design consists of several parts not necessarily united in configuration, but capable of being severed into independent

(*a*) Rules 15–19. There is no appeal from the decision of the Board of Trade. See *re Trade Mark "Normal"* (1887), 35 Ch. D. 231, 234. (*b*) Rule 20.
(*c*) S. 49. (*d*) *Holdsworth* v. *McCrae* (1867), L. R. 2 H. L. 390.

integral parts, then the design registered is the entire thing, exactly as it is described in the pattern furnished; and such registration is therefore not open to the objection of uncertainty, but is valid according to the foregoing provision. The designer, however, is, as we have already pointed out, under this disadvantage, that when he registers a pattern of material, there is no infringement unless it is exactly copied. If the designer be content with putting a design, which is composed of several parts placed together, but capable of being severed and used in a separate form, upon the register without limitation and without explanation, he claims simply to be the inventor of the entire thing, exactly as it is described in the drawing or pattern which he has exhibited, and all that he can claim to protect against imitation is, that thing in its exact form and relative positions and proportions as they appear upon his pattern. Anything, therefore, which is a *fac-simile* of that drawing—any other pattern which is a reproduction of that in its integrity—becomes an infringement. But that which is different in shape and form, or in the relative positions of its several parts, which is not a reproduction of it, as a *replica* or a copy of a picture, would not be an infringement of the thing specified (*a*).

When sample of article registered, design not infringed by article produced on same principle, if different in style.

Thus where a sample of an article had been registered under the 21 & 22 Vict. c. 79, s. 5, Vice-Chancellor Wickens was of opinion that the design so registered would not be infringed by an article produced upon the same principle, if different in style (*b*).

It is doubtful whether, in view of the 3rd sub-section of the 47th section of the Act of 1883, registration by specimen alone ever can be made, this sub-section expressly requiring the application for registration to contain a *statement* of the nature of the design, but possibly this might be waived under rule 29 of the Designs Rules by virtue of the dispensing power vested in the Comptroller with the consent of the Board of Trade.

Rectification of register.

Any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register, or by any entry made without sufficient cause, may apply to the court for an order for expunging or varying the entry; and the costs of the proceedings are in the discretion of the court. On any such application the court may either decide any question as to the rectification of the

(*a*) *Per* Lord Westbury in *Holdsworth* v. *M'Crea* (1867), L. R. 2 H. L. 388.
(*b*) *Thom* v. *Syddall* (1872), 26 L. T. 15.

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register, or may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved (*a*).

Does not apply to an omitted registration.

It will be noticed that the power of the court under this section is to either expunge or vary an entry; it would seem to confer no power to put on the register an entry that has been omitted. As we have already seen, if the Comptroller refuses to enter a design, the remedy of the proprietor is an appeal to the Board of Trade and not to the court.

"Person aggrieved."

The question has been discussed as to who is a "person aggrieved," and, consequently, entitled to apply to have an entry expunged. A person engaged in the same trade, and likely to deal in the same articles as those to which the design is intended to be applied, is *primâ facie* a "person aggrieved." "I should be very unwilling," said Herschell, L.C., in a trade-mark case, "to unduly limit the construction to be placed upon these words, because, although they were no doubt inserted to prevent officious interference by those who had no interest at all in the register being correct, and to exclude a mere common informer, it is undoubtedly of public interest that they should not be unduly limited, inasmuch as it is a public mischief that there should remain upon the register a mark which ought not to be there, and by which many persons may be affected who nevertheless would not be willing to enter upon the risks and expense of litigation. Wherever it can be shown, as here, that the applicant is in the same trade as the person who had registered the trade mark, and whereon the trade mark, if remaining on the register would or might limit the legal rights of the applicant so that by reason of the existence of the entry upon the register he could not lawfully do that which but for appearance of the mark upon the register he could lawfully do, it appears to me that he has a *locus standi* to be heard as a 'person aggrieved'" (*b*).

The applicant must, however, show that in some possible way he may be damaged or injured if the design is allowed to stand, and by "possible" must be meant possible in a practical sense, and not merely in a fantastic view (*c*).

Substitution of name of proprietor.

The court has power to substitute the name of the true owner of a design for the name of a wrongful claimant. Thus where the agent for the proprietor of a design by mistake registered in his own name instead of in the name of his

(*a*) Sect. 90 Act of 1883 and sect. 23 Act of 1888.
(*b*) *Powell* v. *Birmingham Vinegar Co.* (1894), A. C. 8, 10; *re Powell's Trade Mark* (1893), 2 Ch. 388; *Apollinaris' Case* (1891), 2 Ch. 186.
(*c*) *Re Wright, Crossley & Co.'s Trade Mark* (1897), 15 R. P. C. 131, 377.

principal, the court ordered the latter's name to be substituted (*a*). If, however, the name of the proprietor has been changed, *e.g.*, by alteration in the name of a company, no application to the court is necessary, but the Comptroller can make the necessary alteration in the register under section 87 (*b*).

Practice.

Any order of the court rectifying the register must direct that due notice be given to the Comptroller, and the person in whose favour an order has been made must forthwith leave at the Patent Office an office copy of such order upon which the register shall be rectified or the purport of such order entered in the register, as the case may require (*c*).

In *Bayer* v. *Connell* (*d*) the Irish court held that it had no jurisdiction to rectify the register, but that the application must be to the High Court in England, but in a Scotch case it seems to have been assumed that the Scotch courts had such jurisdiction (*e*). At any rate, the application can always be made to the High Court of Justice in England, even if the applicant be domiciled in Scotland or Ireland (*f*).

An application to rectify the register is generally made by motion in the Chancery Division, but it may be by summons. A separate application is necessary; the order cannot be made on a counterclaim (*g*). Four clear days notice of the application must be given to the Comptroller (*h*).

Burden of proof.

Where a person alleged that a design registered by another was invented by himself and carried out by the other person at his (the complainant's) expense and he moved to rectify the register, it was held that the burden of proof was on the applicant (*i*); and generally the burden of proof rests on the person alleging himself to be the author of a design (*k*).

(*a*) *Re Grocott's Design* (1899), 17 R. P. C. 139.
(*b*) *Re Ormonde Cycle Co.'s Mark* (1896), 13 R. P. C. 475.
(*c*) Sects. 90 (3) & 111 (2). Rule 28.
(*d*) (1897), 14 R. P. C. 275; cf. *Kinahan* v. *Kinahan* (1891), 8 R. P. C. 18.
(*e*) *Cowie* v. *Herbert* (1897), 14 R. P. C. 436, 443.
(*f*) *Re King & Co.'s Trade Mark* (1892), 9 R. P. C. 350.
(*g*) *Pinto* v. *Badman* (1891), 8 R. P. C. 181, 187, 190. (*h*) Rule 27.
(*i*) *Re Heinrich's Design* (1892), 9 R. P. C. 73.
(*k*) *Hothersall* v. *Moore*, *ib.* 38.

CHAPTER III.

MARKING.

Registration mark.

BEFORE the delivery on sale of any article to which a registered design has been applied, the proprietor of such design must, if the article is included in Class 13 or Class 14, cause each article to be marked with the abbreviation "Regd.," and must, if the article is included in any of the Classes 1 to 12, cause each article to be marked with the abbreviation "Rd.," and also, in the case of articles other than lace, with the number appearing on the certificate of registration (*a*).

Provisions as to registration mark construed strictly.

These provisions will be construed strictly, and should any copies of a registered design be sold without bearing the registration mark when necessary (*b*), protection will be lost. Thus, in a case under the 6 & 7 Vict. c. 56, where the plaintiff had designed an improved combined chair and steps for library purposes, and had given an order to a die cuttter for plates to be delivered to him with the word "registered" stamped on them for fixing on the chairs, but, before the delivery of these plates, he had sold a large number of the chairs having on them an oval metal plate stamped with the words "Alfred E. Pierce, patentee, 109 Hatton Garden, London," with the royal arms in the centre, but without the word "registered," it was contended that the spirit of the Act had been fully complied with, but the Vice-Chancellor Giffard said he considered the words of the 3rd section of the Act too clear for argument. It was a statute which must be rendered strictly; and therefore from the fact contained in the evidence, which was not denied, that plaintiff had sold many of these articles without the word "registered" or the date of registration attached to them, he must dismiss the plaintiff's bill with costs (*c*), but in a case where the word "Regd." was placed on

(*a*) Rule 5 of 1893.

(*b*) 5 & 6 Vict. c. 100, s. 16. See 13 & 14 Vict. c. 104, ss. 12–14, and 38 & 39 Vict. c. 93. And an action lies for false representation as to the registry of a design; *Barley* v. *Walford* (1850), 9 Q. B. 197.

(*c*) *Pierce* v. *Worth* (1865), 18 L. T. 710.

the article instead of "Rd.," this error was held not to invalidate the registration (*a*); and in another case the registration was upheld where a wrong number was placed on the article in addition to the right number (*b*). In *Heath* v. *Rollason* (*c*) the figure 5 was stamped instead of 3 in the number of the design 232908, but this was accidental, and the copyright was saved by the proviso to section 51 of the Act (*d*).

Where mark to be placed.

Although a bill to prevent an infringement did not allege that the requirements of the Acts had been complied with, yet the Master of the Rolls held, that the bill was not on that ground alone open to demurrer (*e*). Each piece sold must be marked, and if the proprietor sells in small pieces, whether for pattern or for use, he must mark each small piece or pattern (*f*); if in large pieces only he need mark only the large pieces (*g*). And where a narrow coloured trimming was sold by the maker in pieces of many yards having round them paper bands bearing "Rd." and the registration number, it was held that they were sufficiently marked (*h*). A butter-dish and cover were held, under the old Act, to be sufficiently marked by marking

(*a*) *Heinrichs* v. *Bastendorff* (1893), 10 R. P. C. 160.
(*b*) *Harper* v. *Wright* (1895), 2 Ch. 593; (1896), 1 Ch. 142; 12 R. P. C. 433, 483.
(*c*) (1898), A. C. 499; 15 R. P. C. 441.
(*d*) See *post* p. 438.
(*e*) *Sarazin* v. *Hamel* (1863), 32 Beav. 145; 9 Jur. (N.S.) 192; 32 L. J. (Ch.) 378–380.
(*f*) *Heywood* v. *Potter* (1853), 1 Ell. & Bl. 439; 22 L. J. Q. B. 133; 17 Jur. 528; *Hothersall* v. *Moore*, 9 Rep. Pat. Cas., pp. 27, 39.
(*g*) *Blank* v. *Footman* (1888), 39 Ch. Div. 678, 685; 5 Rep. Pat. Cas. 653.
(*h*) *Blank* v. *Footman, Pretty & Co.* (1888), 39 Ch. D. 678; 57 L. J. Ch. 909; 59 L. T. 507; 36 W. R. 921. In this case Mr. Justice Kekewich thus puts it: "It has been argued that the trimming itself ought to be marked, and it would be impossible, and it is admitted that it would be impossible to say where and how often it should be marked. It is obvious that you could not mark every quarter of an inch, and that even if you could do it, you could not, in lace-work like this, preserve the thing if you were to stamp it with marks. Therefore it is not suggested that this ought to be done, but it is said that every article, however small, ought in some way to show that it is a registered design. That, to my mind, is entirely a misconstruction of the 51st section. The Act may or may not go far enough, but the Act says that a mark is to be placed before delivery on sale of any articles to which a registered design is to be applied. The marking is to be caused to be done by the proprietor of the design. If the proprietor of the design does not sell those articles of dress to which the trimmings are affixed, the section lays no liability upon him to mark those articles of dress—what is to be marked by him is the article to which a registered design has been applied—that is the trimming. If he sells it in pieces of 144 yards he must mark the piece of 144 yards. If on the other hand he sell small pieces, whether for patterns or for use, he must mark each small pattern in some manner in which those things can be conveniently marked, as for instance by tying on a label, or by printing something on the packet in which it is. But he is not bound to mark anything but that which he sells, and that is the exact consequence of the decision in *Fielding* v. *Hawley* ((1883), 48 L. T. 639). There the Court held that whether it was a small piece or a large piece he must mark the piece sold, and so I say,—he must mark the piece sold and need not mark anything else." But where twelve squares were marked off, one from the other, by threads woven across the piece, each square being intended to be cut from the rest and used as a duster, Bristowe, V.-C., thought that each square ought to have been marked; *Hothersall* v. *Moore* (1892), 9 R. P. C. 27.

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the dish, as they together only constituted one article (*a*), but where the design was applicable to the shank of a cuff link and the mark was placed on the plate of the link, the design was ordered to be removed from the register (*b*).

Single instance fatal.

A single instance proved of omission to mark has been held fatal (*c*). And under the corresponding provisions of the former Act it was held that the copyright of a registered design was lost if the proprietor (whether English or foreign) sold the registered article even *abroad* without the letters "Rd." being attached thereto, as required by the 5 & 6 Vict. c. 100, s. 4, and 24 & 25 Vict. c. 73 (*d*); but under the policy of the present Act this decision does not seem to be applicable.

Accidental mistakes.

The terms of the 51st section of the Act are "Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered: and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article." Under this last saving provision comes the case of *Wittman* v. *Oppenheim* (*e*). There the proprietor of a registered design instructed the manufacturer, who made for him the articles to which the design was applied, to stamp the proper mark upon them, and furnished him with a die for the purpose, but the manufacturer by inadvertence used an old die and marked some of the articles with a mark which belonged to another design registered by the same proprietor (the copyright of which had expired), both marks containing the letters Rd. in a prominent position; it was held that the proprietor had not forfeited his copyright by selling some of the articles so wrongly marked without observing his error, but was protected by the saving clause as having taken "all proper steps to ensure the marking."

"The section [51] by its concluding words," said Lord Herschell in one case (*f*), "leaves an opening to prevent the operation of the section in full stringency, because it provides that the right shall not cease if all proper steps have been taken by the proprietor to insure the marking of the article.

(*a*) *Fielding* v. *Hawley* (1883), 48 L. T. 639; 47 J. P. 582.
(*b*) *Re Morton's Design* (1900), 17 R. P. C. 117.
(*c*) *Hunt* v. *Stevens*, W. N. (1878) 79.
(*d*) *Sarazin* v. *Hamel* (1863), 32 Beav. 151; 9 Jur. (N.S.) 192; 32 L. J. (Ch.) 380.
(*e*) (1884), 27 Ch. Div. 260.
(*f*) *Heath* v. *Rollason* (1898), A. C. 499, 504.

In interpreting these concluding words, I think it is necessary to bear in mind the object of the section, and to take into account, too, what the nature of the omission was. The object of the section as stated in plain terms is to 'denote that the design is registered'—that is to say, to give warning to the public that they are not entitled to copy it by reason of registration. Of course, if there is nothing to give that notice to the public, the proprietor would need to make out a very strong case to excuse himself under the concluding words of the section, because he has failed to do that which was essential to the very purpose of the provision contained in the section, namely, to indicate to the public that the design was a registered one. Even in that case he might escape the loss of his design by making out a case which would show that it was not due to any fault of his; but it seems to me that the case to be made out would then need to be much stronger than if there were merely some error in complying with the exact requirements of the section as to the figures or words to be put upon the article if there were such compliance as plainly to indicate that the design was a registered one."

In the case from which the above remarks are taken, the plaintiff had employed a competent person to make the dies and stamp coffin plates, and the dies were correctly made and stamped upon the plates in every instance, except one, and in that case the figure 5 was stamped instead of 3 in the number of the design 232908, and a certain number of plates thus stamped were sold. Upon the mistake being pointed out, the plaintiff immediately had it corrected. The plaintiff was held to have taken all proper steps. Again, an article will not lose the protection of the statute when part of its registration mark becomes illegible during the process of manufacture (*a*); but it is the duty of the manufacturer to take proper precautions to see that his orders are carried out, and that the moulds from which his designs are marked do not become so worn as to prevent a distinct impression of the mark from being conveyed to the article, and if he neglects to do so, and the article is not marked, his protection will be lost (*b*).

Difficult questions may arise if the failure to mark the articles is due to the default of a licensee of the proprietor of the design.

It may be mentioned that it is not necessary to mark a

(*a*) *Fielding* v. *Hawley* (1883), 48, L. T. 639.
(*b*) *Johnson* v. *Bailey* (1893), 11 R. P. C. 21; cf. *Wedekind* v. *General Electric Co.* (1897), 14 R. C. P. 190.

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book containing copies of registered designs under section 51 (*a*).

Delivery on sale.

The mark must be placed on the article before there is any "delivery on sale." The meaning of this expression was considered in the case of *Woolley* v. *Broad* (No. 2) (*b*). There the plaintiff, John Woolley, the inventor of certain lace designs, had entered into a contract with A. H. Woolley and Co., by the terms of which A. H. Woolley and Co. were to give orders to John Woolley and to nobody else, and John Woolley was to manufacture for A. H. Woolley and nobody else; but John Woolley was to hand over the goods to A. H. Woolley and Co. in the "brown" or unfinished state, to be turned by the latter into white lace and prepared for the market. It was held that the delivery by John Woolley to A. H. Woolley, who paid for the goods, was a delivery on sale, and that though the goods were only delivered in the rough state they ought to have been marked.

This case is apt to deceive. It will be noticed that there was an actual sale by John Woolley to A. H. Woolley and Co., and the articles had not been simply sent to the latter in order to be finished and then returned to John Woolley. Further, so far as the application of the design was concerned, the lace was finished and the process to which it was submitted by A. H. Woolley and Co. did not affect the design. If goods are sent to another manufacturer only to undergo a finishing process, this will not, ordinarily, be a delivery on sale.

Penalty for false mark.

It is provided by section 105 of the Act of 1883, that any person who describes any design applied to any article sold by him as registered, which is not so, shall be liable for every offence, on summary conviction, to a fine not exceeding £5, and a person is to be deemed, for the purpose of this enactment, to represent that a design is registered, if he sells the article with the word "registered" or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

(*a*) *Branchardière* v. *Elvery* (1851), 4 Ex. 380; 18 L. J. Ex. 381.
(*b*) (1892), 9, R. P. C. 429.

CHAPTER IV.

DURATION AND TRANSFER OF COPYRIGHT IN A DESIGN.

Duration of copyright.

UNDER the old law the period of protection varied, in the case of ornamental designs, from nine months (designs applied by printing to shawls or yarn, thread or warp, classes 8 and 9) to five years (designs applied to articles composed of metal, class 1), while in the case of useful designs three years was allowed. Under the new Act a uniform period of five years' protection from the date of registration is afforded to all designs without distinction of class or character.

Forfeiture.

But if a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design is to cease (*a*).

It is also provided that before delivery on sale (*b*) of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish to the Comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the Comptroller may erase his name from the register, and thereupon his copyright in the design is to cease (*c*). Copyright is also liable to forfeiture, as we have seen, if articles to which a registered design has been applied are sold without being properly marked. Copyright extends to the United Kingdom and the Isle of Man (*d*).

The transfer of a copyright of a design must be in writing, as must also any partial assignment or licence (*e*).

The Patents, Designs and Trade Marks Acts, 1883 (*f*),

(*a*) S. 54.

(*b*) As to the meaning of this expression, see p. 440, *ante*.

(*c*) Sect. 50 (2); see also S. 94 and Rules 12–14.

(*d*) Sec. 112.

(*e*) *Jewitt* v. *Eckhardt* (1878), 8 Ch. Div. 404; 26 W. R. 415. There is no requirement to this effect in the present Act or rules as there was in the Act of 1842, sec. 6, but see opinion expressed by Wright, J., in *Woolley* v. *Broad* [1892], 1 Q. B. 806; 9 Rep. Pat. Cas. 208.

(*f*) S. 87.

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provides that where a person becomes entitled by assignment, transmission, or other operation of law to the copyright in a registered design (*a*), the Comptroller shall, on request and on proof of the title to his satisfaction, cause the name of such person to be entered as proprietor of the copyright, and the person for the time being entered in the register as proprietor shall, subject to the provisions of the Act, and to (*b*) any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise to deal with the same, and to give effectual receipts for any consideration for such assignment, licence, or dealing. And it is further provided, that any equities in respect of such design may be enforced in like manner as in respect of any other personal property.

Request to make entry on register.

By the Rules, a request is to be made by any person becoming entitled as above, for the entering of his name in the register as the proprietor, or as having acquired such right as the case may be, addressed to the Comptroller, and left at the Patent Office, Designs Branch (*c*).

This request is, in the case of an individual, to be made and signed by the person requiring to be registered as proprietor; and, in the case of a firm or partnership, by some or one or more members thereof, or in either case by his or their agent duly authorized to the satisfaction of the Comptroller; and, in the case of a body corporate, by their agent authorized in like manner (*d*).

What request to contain.

This request is to state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right, as the case may be (*e*).

Statutory declaration to accompany request.

It must also be accompanied by a statutory declaration verifying the several statements, and declaring that the particulars comprise every material fact and document affecting the proprietorship of the design, or the right to apply the same, as the case may be, as claimed by such request (*f*). And the claimant is to furnish to the Comptroller such other proof of title as he may require (*g*).

(*a*) Copyright in design devolves on the executor, *Jewitt* v. *Eckhardt*, *supra*.
(*b*) Added by 51 & 52 Vict. c. 50, s. 21. (*c*) Rule 21.
(*d*) Rule 22. (*e*) Rule 23. (*f*) Rule 24.
(*g*) Rule 25. For form of request see Schedule II., K. Rules of 1890, or, in case of a lace design, Form K[1]. Rules 1890.

As to licences.

It seems clear, from the 58th section of the Act, that a licence must be in writing, and a licensee cannot sue for infringement, unless, at any rate, he has the right to *apply* the design to articles of manufacture (*a*).

Assignee should register.

The right to sue is vested in the "registered" proprietor of the design, and it would therefore seem that an assignee must register before he can recover in his action, though it is not necessary that he should be registered when he issues his writ (*b*).

No time should be allowed to elapse between a transfer and its registration; for, in case of the bankruptcy of the registered proprietor of a design, after the execution of a transfer and before registration of such transfer, the copyright of the design would probably be considered in the order and disposition of the bankrupt, and would therefore pass to his trustee (*c*).

(*a*) *Woolley* v. *Broad* (1892), 1 Q. B. 806; *Jewitt* v. *Eckhardt* (1878), 8 Ch. D. 404.

(*b*) *Ihlee* v. *Henshaw* (1886), 31 Ch. Div. 323; *Magnolia Metal Co.* v. *Atlas* (1897), 14 R. P. C. 389.

(*c*) See *Longman* v. *Tripp* (1805), 2 Bos. & Pul. New R. 67; *Hesse* v. *Stevenson* (1806), 3 Bos. & Pul. 565; *Re Dilworth* (1833), 1 Dea. & Chitt. 411.

CHAPTER V.

INFRINGEMENT AND THE REMEDIES THEREFOR.

What is infringement.

By section 60 of the Act of 1883 copyright is defined to mean the exclusive right to apply a design to any article of manufacture or to any substance, artificial or natural, or partly artificial and partly natural, in the class or classes in which the design is registered. And by section 58, during the existence of the copyright it is unlawful for any person:

(i.) Without the licence or written consent of the registered proprietor to apply or cause to be applied (*a*) such design, or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture, or to any substance, artificial or natural, or partly artificial and partly natural, and

(ii.) To publish or expose for sale any article of manufacture, or any substance to which such design, or any fraudulent or obvious imitation thereof, shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor (*b*).

Under old Act what necessary to prove

Under the old Act it was necessary that the proprietor should prove that the offending party exposed the pirated goods for sale knowing that the proprietor had not given his consent: and the proof by the proprietor of this knowledge on the part of the offending party was more than the proprietor could in general adduce. This objectionable feature was omitted in the 7th section of the 5 & 6 Vict. c. 100, and in lieu it was provided that notice was to be given that the proprietor had not given his consent to the application of the design. And a notice was not sufficient unless it expressly stated that the proprietor of the design had not given his consent to the application of the design, and whether or not he intended to sue either

Notice by proprietor of copyright.

(*a*) Added by sect. 7 of the Act of 1888.
(*b*) *Woolley* v. *Broad* (1892), 1 Q. B. 806; 9 Rep. Pat. Cas. 208; cf. *Mallett* v. *Howitt*, W. N. (1879) 107.

for the application of the design to an article of manufacture or for the sale of such article with the design applied. It had also to specify the real claim intended to be made.

What insufficient.

Thus where a notice was addressed to the defendants, both as manufacturers who had applied the design to articles of manufacture, and as retail dealers who had sold articles of manufacture to which the design had been applied by others, and stated that if the defendants either applied the design to an article of manufacture, or sold an article of manufacture with the design applied to it, the plaintiff would sue them; it was held that a sufficient notice had not been given, the court being of opinion that it was not tantamount to a notice that the plaintiff had not given his consent to the application of his design to the manufactured article, and that such notice was perfectly consistent with the fact of his having actually given his consent, and could not be considered the performance of a condition introduced to save retail dealers from very serious liability (*a*).

No notice need be given under present Act.

No such notice in writing is required by the present Act to be given, though it has been said that to render a retail seller liable it should be shown that before he sold the articles complained of, he had sufficient information of the plaintiff's registered design to enable him to judge what it was the plaintiff claimed (*b*). The words of the Act, however, hardly justify such a conclusion, though the retailer must, before he can be made liable, have knowledge that the design has been applied without the consent of the registered proprietor, and a notice is useful to prove such knowledge.

The publication and sale of a book containing registered designs, with or without a notice that persons wishing to manufacture them for the purpose of sale must have the inventor's permission, does not amount to a licence to purchasers of the book to sell articles to which the design has been applied, though it may amount to a licence to copy the designs for private use (*c*).

What is an infringement.

To expose a person to an action for infringement of a design he must have applied the design to an article of manufacture for the purposes of sale, and he would not be liable if he applied it for his amusement or even for his own use if he had no intention of selling the article to which the design has been applied.

Manufacture and sale in

The copyright of designs protected under the Act of 1883

(*a*) *Norton* v. *Nicholls* (1857), 5 Jur. 1203; 28 L. J. Q. B. 225.
(*b*) *Smith* v. *Lewis, Roberts & Co.* (1888), 5 Rep. Pat. Cas. 611 (Bristowe, V.-C.).
(*c*) *Branchardière* v. *Elvery* (1851), 4 Ex. 380; 18 L. J. Ex. 381.

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foreign country.

has no extra-territorial effect, and consequently the manufacture and sale by British subjects in a foreign country of goods the design of which is protected under the statute, is not an infringement of that copyright (*a*).

Meaning of "fraudulent and obvious imitation."

As to what is "fraudulent and obvious imitation," some difficulty has arisen. In one case it was laid down that the Act does not prohibit imitation, a design being open to such great varieties; a fair imitation—that is something to which the idea of the original design has been applied, is not prohibited; and that "fraudulent imitation" is imitation with knowledge; conscious imitation, the man who imitates having the design before him, and knowingly and wilfully imitating, and his imitation not being sufficiently original to be protected as a fair imitation (*b*). And it has been further said that it is permissible to imitate a registered design if the result differs, as a whole, from the registered design—if it is in fact substantially a new design (*c*).

Again, it has been said that "obvious" does not mean obvious at a glance to the unskilled eye, but obvious to a judge or jury with the assistance of experts—persons conversant with the particular trade; and that the test is not merely to look at the two designs side by side (though that is one element of comparison), but that consideration should also be given to what would be the effect supposing they were seen at different times or looked at a little distance off (*d*).

Thus where the plaintiffs registered a design producing on calico a particular effect, familiar in silk and velvet, and the defendants prepared a design which in general arrangement resembled the plaintiffs' and produced a similar effect, though there were variations in detail (*e.g.*, where the plaintiffs' design had acorns and sprays, the defendants substituted mangosteens and sprays closely resembling the plaintiffs' in contour), it was held that the resemblance being so close as to make it impossible to distinguish the one from the other by memory alone, and there being coincidences between the two designs which would have been strange, but for the fact that the defendants' designer had had the plaintiffs' design before him, the defendants' design was *primâ facie* an "obvious imitation" of the plaintiffs' and an injunction was granted till the trial. The defendants in this case had in fact put the plaintiffs'

(*a*) *Potter & Co.* v. *Braco de Prata Printing Co.* (1891), 8 R. P. C. 218.
(*b*) *Barron* v. *Lomas* (1880), 28 W. R. 973, *per* Jessel, M.R. See *Sherwood & Cotton* v. *Decorative Art Title Co.* (1887), 4 Rep. Pat. Cas. 207.
(*c*) *Thom* v. *Syddall* (1872), 26 L. T. 15.
(*d*) *Grafton* v. *Watson* (1884), 50 L. T. 420.

design before their draughtsman and instructed him to produce the effect, but not to copy the plaintiffs' design. The decision was approved by the Court of Appeal (*a*), Cotton, L.J., saying, "If a man knowing that the pattern is a registered design, goes and imitates it, and does that without any sufficient invention on his own part, that would be a fraudulent imitation, if in fact it is an imitation. There may be an imitation which is unconscious—that is to say, not an imitation in the sense of copying—producing the same effect without knowing of the registered design; but when the registered design is known, then if there is imitation the burden of proving that the registered design was not copied is, to my mind, thrown on the person who produces the pattern like that which is imitated" (*b*).

It is not easy to define in words exactly what is meant by a fraudulent imitation. This expression was no doubt introduced into the Act for the purpose of meeting the case of an imitation, not an obvious imitation, but an imitation varied for the purpose really of perpetrating what is a legal fraud. The instance given by Mr. J. Manisty (*c*), is "having before your mind and before your eye the design of another and introducing into your design some differences in order, if possible, to avoid coming within the Act of Parliament."

Example of obvious imitation.

Where a design was registered, the application being for "a range-door, with moulding on the top, moulding forming front of range; *shape* to be registered," and the drawing showed a moulding on the front of the door fitting into the moulding on the front of the range and flush with it; and the evidence showed that the merit of the design lay in attaching the moulding to the door instead of to the fire-cover, as had been done previously in convertible kitchen-ranges, it was held that another design, in which the moulding (which was of a different outline) on the door overlapped the moulding on the front of the range, was an obvious imitation of the registered design (*d*).

The test of the eye.

The tendency of modern cases is to determine the question of infringement solely by an appeal to the eye. "It seems to me," said Lord Herschell, in *Hecla Foundry Co.* v. *Walker*, *Hunter and Co.* (*e*), "that the eye must be the judge in such a

(*a*) 51 L. T. 141 (C.A.).
(*b*) Cf. *Harper & Co.* v. *Wright* (1896), 1 Ch. 142.
(*c*) *Sherwood & Cotton* v. *Decorative Art Tile Co.* (1887), 4 Rep. Pat. Cas. 207.
(*d*) *Walker, Hunter & Co.* v. *Hecla Iron Co.* (1887), 15 C. of S. Cas. 660; 25 Scot. L. R. 491; 5 Rep. Pat. Cas. 71, 365; 6 Rep. Pat. Cas. 554.
(*e*) (1889), 14 A. C. 550, 555.

case as this, and that the question must be determined by placing the designs side by side and asking whether they are the same, or whether the one is an obvious imitation of the other. I ought perhaps to qualify this by saying that as a design to be registered must, by sect. 47, be a 'new or original design, not previously published in the United Kingdom,' one may be entitled to take into account the state of knowledge at the time of registration, and in what respects the design was new or original, when considering whether any variations from the registered design which appear in the alleged infringement are substantial or immaterial."

The fact, therefore, that there are differences in detail between two designs will not necessarily prevent the one from being an imitation of the other. In one case the plaintiff had registered an upright hexagonal metal stove, the sides of which had the representation in metal work of a church window, of a particular style of architecture, with tracery above and below. Mr. Justice Kekewich held that a similar stove produced by the defendants was not an infringement of the plaintiffs' design, because, though the general appearance might be the same, on examining them closely he found that the windows in the two stoves were different, since they belonged to entirely different periods of architecture and the tracery above and below the windows was different (*a*). This decision was, however, reversed by the Court of Appeal, who held that the defendants' stove was an obvious imitation of the plaintiffs' (*b*). "I think," said Lord Herschell, "that the learned judge in the court below erred in considering too much the details as essentials of the design; the designs may be the same although the details largely differ. . . . The truth is, that the defendants took all the essential elements of the plaintiffs' design."

Remedies for infringement.

Any person who pirates a registered design is liable to forfeit to the registered proprietor a sum not exceeding £50 for every offence, but not exceeding in all the sum of £100 in respect of any one design. Such sum may be recovered as a debt by action in any court of competent jurisdiction (*c*). An alternative remedy is given by sect. 59 of the Act of 1883, which provides that the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of such design, or of

(*a*) *Harper & Co.* v. *Wright* (1895), 2 Ch. 593; 12 R. P. C. 433.
(*b*) (1896), 1 Ch. 142. See also *Oliver & Co.* v. *Thornley & Co.* (1896), 13 R. P. C. 490; *Varley* v. *Keighley Ironworks* (1896), 14 R. P. C. 169; *Neill* v. *Bennett & Sons* (1898), 15 R. P. C. 412.
(*c*) Sect. 58, Act of 1883; sect. 7 (2), Act of 1888.

any fraudulent or obvious imitation thereof, for the purpose of sale to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design, or any fraudulent or obvious imitation thereof, shall have been so applied, such persons knowing that the proprietor had not given his consent to such application. The plaintiff cannot recover both penalties and damages, but must elect under which section he will proceed. Where there is a difficulty in proving damages proceedings for penalties will be advisable. Where the plaintiffs proved a single purchase of one hundred tiles one fine of £50 was imposed (*a*). A plaintiff can also obtain an injunction in a proper case.

Infringer not entitled to notice before action.

An innocent infringer of a registered design must pay the costs of a motion for an injunction to restrain him from continuing the infringement, although the plaintiff has given him no notice of the infringement before serving him with the writ in the action, the plaintiff being under no obligation to give any notice before commencing his action (*b*). Trivial actions are, however, liable to be dismissed with costs (*c*).

But in dealing with the retailer it is necessary to show that before selling he had notice that the articles complained of were an infringement of the plaintiff's design, otherwise he will not be liable at all (*d*).

Penalty for wrongfully describing design as registered.

Any person who describes any design applied to any article sold by him as registered which is not so, is liable for every offence, on summary conviction (*e*), to a fine not exceeding £5; a person is deemed to represent that a design is registered if he sells the article with the word "registered" (or any word or words expressing or implying that registration has been obtained for the article), stamped, engraved, or impressed on, or otherwise applied to the article (*f*). It is an offence to

(*a*) *Sherwood* v. *Decorative Tile Co.* (1887), 4 R. P. C. 207.

(*b*) *Wittman* v. *Oppenheim* (1884), 27 Ch. D. 260; 54 L. J. Ch. 56; 50 L. T. 713; 32 W. R. 767; *Upman* v. *Forester* (1883), 24 Ch. D. 231; 52 L. J. Ch. 946.

(*c*) *Jan* v. *Grossman* (1895), 12 R. P. C. 537; *American Tobacco Co.* v. *Guest* (1892), 1 Ch. 630; 9 R. P. C. 218.

(*d*) *Halsey* v. *Brotherhood* (1880), 15 Ch. Div. 514, 517; *Smith* v. *Lewis, Roberts & Co.* (1885), 5 Rep. Pat. Cas. 811. But an injunction will be granted with costs if he unsuccessfully contests the plaintiff's title; *Werner Motors* v. *Gamage* (1904), 1 Ch. 264.

(*e*) In the application of the Act to Ireland "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1881, and any act amending it (sect. 117, Act 1883).

(*f*) Sect. 105, Act 1883. And see the Merchandize Marks Act, 1887, which imposes penalties for applying any false trade description to goods. See sect 3.

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continue the sale of articles with the word "registered" on them after the expiration of the copyright (*a*).

Proceedings in Isle of Man.

The Act of 1883 extends to the Isle of Man, and nothing in such Act is to affect the jurisdiction of the courts in the Isle in proceedings for infringement or in any action or proceeding respecting a design competent to those courts.

The punishment for a misdemeanour under the Act in the Isle of Man is to be imprisonment for any term not exceeding two years with or without hard labour, and with or without a fine not exceeding £100, at the discretion of the court. And any offence committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved in the manner in which offences punishable on summary conviction may for the time being be punished.

In what courts proceedings may be taken.

In England proceedings may be instituted in the High Court of Justice or in the Chancery of the County Palatine of Lancaster, which latter Court has, under the Chancery of Lancaster Act, 1890, the same powers and jurisdiction over persons and property within the Palatine County as the High Court in its Chancery Division. It has been held (*b*) that a county court has no jurisdiction to try a patent case, where the validity of the patent is in question, but it is doubtful whether the reasoning applies to a case of infringement of a design, and such cases have been tried in county courts without any objection being taken to the jurisdiction (*c*). The Act of 1883 does not provide any summary remedy for recovering penalties for infringement as was the case under the Act of 1842.

Right to sue only in registered proprietors.

In order to succeed in an action under sections 58 or 59 of the Act of 1883, it is necessary that the plaintiff be a registered proprietor. In a recent case the registered proprietor of a design applicable to lace goods registered under the Act of 1883, verbally agreed with the other plaintiffs to supply them all the goods manufactured by him according to the design, and to give them the exclusive right of selling such goods. The registered proprietor and the exclusive licensees having claimed to recover damages against a third person for applying the design to lace goods and selling goods to which it had been applied without the licence or written consent of the plaintiffs, the defendant raised the point of law that the statement of

(*a*) See *Cheavin* v. *Walker* (1877), 5 Ch. Div. 850, 863.
(*b*) *R.* v. *Halifax County Court Judge* (1891), 2 Q. B. 263 ; 8 R. P. C. 338.
(*c*) See *Moody* v. *Tree* (1892), 9 R. P. C. 333.

claim disclosed no cause of action in the licensees, and it was so held because the licensees were not the registered proprietors of the design, and the only right of action in respect of the injuries complained of was that given by section 59 of the Act to the registered proprietor exclusively. It was contended that section 61 showed that the person who had the right to apply the design should be regarded as the proprietor, because this section provides that "every person acquiring for good and valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent but not otherwise." But the court considered the section did not touch the case, and was meant only to apply to cases like that of a servant who executes a new and original design for his master, and then the person for whom the design is made is to be considered the proprietor (*a*).

Burden of proof.

Where one person is already on the register and another person calls in question his right to be on the register, the burden of proof is on the person impeaching the title of the registered proprietor (*b*).

No provisions for delivery up of pirated designs.

There was no provision in the Designs Acts nor is there in the present Act analogous to that of the 23rd section of the Literary Copyright Act, 1842, as to the delivery up of unsold copies of a pirated book to the proprietor of the copyright without his making any compensation for the cost of production and publication; but in the case of *McCrae* v. *Holdsworth* (*c*), Lord Justice Knight Bruce made an order under the Designs Act for the delivery up to the plaintiff, "for the purpose of being destroyed, the drawing or drawings, point paper, and the several cards used in applying his design, and also of the articles manufactured by the defendants to which the plaintiff's design had been applied."

An order for delivery of pirated designs now usually accompanies an injunction (*d*), but, of course, such an order cannot be made against a person who is not a party to the action (*e*).

(*a*) *Woolley* v. *Broad*, [1892] 1 Q. B. 806; 9 Rep. Pat. Cas. 208.
(*b*) *In the matter of Heinrichs' Registered Design* (1892), 9 Rep. Pat. Cas. p. 73.
(*c*) (1848), 2 De Gex & Sm. 497; 12 Jur. 820.
(*d*) *Gordon & Co.* v. *Patrick* (1895), 12 R. P. C. 22; *Knowles & Co.* v. *Bennett* *ib.* 137.
(*e*) *Knowles & Co.* v. *Bennett*, *ubi sup.*

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Pleading.

In a statement of claim under the Patents, Designs, and Trade Marks Act, 1883, the following allegations should be inserted in their proper places; first, that previously to publication of the design the plaintiff caused a proper entry thereof to be made in the registry; secondly, there should also be special allegations that the design is new or original, and has not been previously published in the United Kingdom or elsewhere (*a*); thirdly, that the defendant has applied the design without the licence or written consent of the registered proprietor, or has exposed articles for sale to which the design has been applied knowing that the same has been so applied without the consent of the registered proprietor. The statement of claim should also make it clear whether the plaintiff is proceeding for damages or penalties.

Evidence.

The articles alleged to be piracies should be produced to the court, in order that they may be compared with the original design and the articles to which it has been applied by the proprietor (*b*). But where the alleged piracies were proved to have been stolen out of the possession of the plaintiff, the uncontradicted testimony of a witness as to their nature has been held sufficient (*c*).

The court, or a jury, will then be able to pronounce, on the comparison, whether the registered design has been applied or not. But if what is complained of is a fraudulent imitation, and not an application of the exact design, it will be convenient, if possible, to show by direct evidence that the defendant's design has been taken from the plaintiff's (*d*).

Terms on which particulars of objection may be amended.

The rule of practice in patent actions that a defendant will be allowed to amend his particulars of objections on terms that the plaintiff may elect to discontinue his action and the defendant bear the costs subsequent to the delivery of his first particulars, was applied to an action to restrain infringement of copyright in registered designs (*e*), but the judge has complete discretion (*f*).

In action under 58th sect., interrogatories cannot be delivered.

In an action under the 58th section the plaintiffs are not entitled to interrogate the defendant (*g*). The sum recoverable under this section is regarded in the light of a penalty, and consequently interrogatories cannot be administered.

(*a*) On pleading in Design cases, see *Sarazin* v. *Hamel* (1863), 32 Beav. 145; and *Woolley* v. *Broad*, [1891] 1 Q. B. 806; 9 Rep. Pat. Cas. 208.

(*b*) *Sheriff* v. *Coates* (1830), 1 Russ. & My. 159.

(*c*) *Fradella* v. *Weller* (1831), 2 Russ. & My. 247.

(*d*) *Lowndes* v. *Browne* (1848), 12 Ir. L. Rep. 293; cited Norman on 'Designs,' p. 51.

(*e*) *Morris, Wilson & Co.* v. *Coventry Machinists' Company*, [1891] 3 Ch. 418; 60 L. J. Ch. 524; 40 W. R. 152; 8 Rep. Pat. Cas. 353.

(*f*) *Woolley* v. *Broad* (1892), 9 R. P. C. 429.

(*g*) *Saunders and another* v. *Wiel*, [1892] 2 Q. B. 18, 321.

Costs.

Where a defendant succeeds generally he may have the costs of some of his defences in which he has not succeeded; but where he has raised a distinct issue and has failed, he ought not to have the costs of that issue (*a*).

In a case where the plaintiffs put in evidence which the court considered unnecessary and improper, though judgment was given in their favour, the court awarded them two-thirds only of the taxed costs (*b*).

Provisional protection at an end.

Provisional protection, which was allowed by the 13 & 14 Vict. c. 104, is now at an end, there being no provision made in the recent Acts for such, but the protection afforded to those exhibiting in industrial or international exhibitions made permanent by the 28 & 29 Vict. c. 3 and 33 & 34 Vict. c. 27, is continued by the 57th section of the Act of 1883, which is as follows:—

Exceptions.

The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered or invalidate the registration thereof, provided that both the following conditions are complied with, namely:—

(a) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(b) The application for registration must be made before or within six months from the date of the opening of the exhibition.

By the rules of 1890, the notice to be given to the comptroller of the intention to exhibit or to publish a description of the design is to be a seven days' notice in writing (*c*). And, for the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant is to furnish to the comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as he may in each case require.

(*a*) *Blank* v. *Footman, Pretty & Co.*, 39 Ch. Div. 678.

(*b*) *Sherwood & Cotton* v. *Decorative Art Tile Co.*, 4 Rep. Pat. Cas. 207, 212. See further as to costs, *Grafton* v. *Watson* (1884), 51 L. J. Ch. 141; *Winfield* v. *Snow* (1891), 5 R. P. C. 15. Trivial actions will be dismissed with costs, *Jan* v. *Grossman* (1895), 12 R. P. C. 537.

(*c*) Rule 36.

Foreign designs.

As to foreign designs, section 103 of the Act of 1883 enables Orders in Council to be issued declaring the provisions of that section applicable to foreign states specified in such order.

Any person who has applied for protection for any design in any such state is entitled to registration of his design, under the Act, in priority to other applicants, and such registration is to have the same date as the date of the application in such foreign state (*a*). The application in this country, however, must be made within four months from the application for protection in the foreign state (*b*).

If the application be not made in time (even though no order was in force within the time limited), and the design has been published in the United Kingdom, the right of registration will be gone. The proprietor of the design is precluded from recovering damages for infringements happening prior to the date of the *actual registration* of his design in this country.

The exhibition or use of the design in the United Kingdom or Isle of Man during the four months, or the publication therein during this period, of a description or representation of the design, will not invalidate the registration.

All applications for registration pursuant to the section under consideration, must be made in the same manner as an ordinary application under the Act.

The provisions of the section only apply to those foreign states with respect to which the Crown by Order in Council declares them to be applicable, and so long only, in the case of each state, as the Order in Council continues in force with respect to that state. Orders are now in force as to the following states which are parties to the Industrial Property Convention, 1883, as amended in 1900: America, Belgium, Denmark with the Faroe Islands, Dominican Republic, France and her colonies, Germany, Italy, Japan, Norway, Portugal with the Azores and Madeiras, Servia, Spain, Sweden, Switzerland, and Tunis. Orders are also in force with regard to the following states which are not parties to the Convention:—Paraguay and Uruguay (O. in C., 24th September, 1886), Mexico (O. in C., 28th May, 1889), Roumania (O. in C., 5th August, 1892), Ecuador (O. in C., 16th May, 1893), Greece (O. in C., 15th October, 1894), and the Republic of Honduras.

Colonial designs.

Under section 104, Orders in Council may be issued applying the provision of the Act of 1883, with such variations or

(*a*) Sect. 103, Act 1883, as amended by 48 & 49 Vict. c. 63.
(*b*) See *Re Application by Californian Fig Syrup Co.*, W. N. (1888), p. 248; 6 Rep. Pat. Cas. 126.

additions, if any, as may be thought proper to British Possessions.

It must be first shown to the Crown that the legislature of the British Possession in whose favour the Act is to have application, has made satisfactory provision for the protection of designs registered in this country; and any Order in Council will take effect from the date mentioned in it as if its provisions had been contained in the Act (*a*).

The only Orders at present in force under this section are in favour of Queensland, which was made the 17th September, 1885; New Zealand, made the 8th February, 1890; Tasmania, made the 30th April, 1894; Western Australia, made the 11th May, 1895.

(*a*) Sect. 104.

PART V.

INTERNATIONAL AND COLONIAL COPYRIGHT.

CHAPTER I.

INTERNATIONAL COPYRIGHT.

Non erit alia lex Romæ, alia Athenis; alia nunc alia posthac, sed et apud omnes gentes et omnia tempora una eademque lex obtinebit.—CICERO.

International copyright the offspring of modern civilization.

INTERNATIONAL law is entirely the offspring of modern civilization, and is the latest important discovery in political science.

The origin and progress of international law is itself a remarkable step in the march of civilization. Nations now begin to acknowledge their subjection to laws in conformity with natural justice and reason, as in the very origin of society individuals acknowledged themselves so bound. And the development of international law will proceed amongst the civilized nations of the earth, until citizens can enjoy in foreign countries all the rights which they enjoy in their own. Commerce, the influence of which unites the human family by one of its strongest ties, the desire of supplying mutual wants, demands an international code for the civilized nations of the earth. Art demands that the property in its inventions should be secured by an international law of patents. Literature, that the property in its works should be secured by international copyright.

"The actual law of nations," observes Mr. Curtis (*a*), "knows no exclusive right of an author to the proceeds of his work, except that which is enforced by the municipal law of his own country, which can operate nowhere but in its own jurisdiction. As soon as a copy of a book is landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the

(*a*) 'Copyright,' p. 22.

law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

Formerly, if a book were written by a foreigner and published abroad, a person who purchased the right to publish here could not enjoy the right exclusively (*a*).

International Copyright first regulated by 7 & 8 Vict. c. 12, and 15 & 16 Vict. c. 12.

Until the passing of the International Copyright Act, 1886 (*b*) International Copyright in England, that is copyright in works first published out of the British dominions was regulated by the 7 & 8 Vict, c. 12, explained by the 15 & 16 Vict. c. 12, the 25 and 26 Vict. c. 68, and 38 & 39 Vict. c. 12.

The Act of 1837 had reference solely to books.

The 7 & 8 Vict. c. 12 repealed an earlier Act, the 1 & 2 Vict. c. 59, which had been found insufficient, and, in particular, did not empower the Crown to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, or to extend the privilege of copyright to prints and sculpture first published abroad; it merely had reference to books.

Enlargement of the power conferred on the Crown of concluding international copyright conventions.

By the Act of 1844 (*c*) the Crown was empowered by any Order in Council to direct that as respects all or any particular class of the following works (namely), books, prints, articles of sculpture, and other works of art to be defined in such order, which should, after a future time to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, should have the privilege of copyright therein during such period as should be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers and makers of the like works respectively first published in the United Kingdom might be entitled to.

If the order applied to books, the copyright law as to books first published in this country should apply to the books to which the order related, except so far as might be excepted in any order, and except as to the delivery of copies of books at the British Museum and the other libraries (*d*).

And if the order applied to prints, articles of sculpture, or to any such other work of art as aforesaid, the copyright law as to

(*a*) *Guichard* v. *Mori* (1831), 9 L. J. Ch. (O.S.) 227.

(*b*) The Acts 7 & 8 Vict. c. 12, 15 & 16 Vict. c. 12, 25 & 26 Vict. c. 68; 38 & 39 Vict. c. 12, and 49 & 50 Vict. c. 33, may under the Short Titles Act, 1892, be cited collectively as the International Copyright Acts. The Acts may also be separately cited as the International Copyright Act, 1844, the International Copyright Act, 1852, the Fine Arts Copyright Act, 1862, the International Copyright Act, 1875, and the International Copyright Act, 1886. (*c*) 7 & 8 Vict. c. 12. (*d*) Sect. 3.

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prints, sculptures, and such other works of art first published in this country should apply to the prints, sculptures, and other works of art to which such order related, except as might be provided in any order (*a*).

The 5th section of the Act enacted that it should be lawful for the Crown, by order of the Crown in Council, to direct that the authors of dramatic pieces and musical compositions, which should after a future time, to be specified in such order, be first publicly represented or performed in any foreign country, to be named in such order, should have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as should be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom might for the time be entitled by law to the sole liberty of representing and performing the same: and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, should, subject to such limitations as to the duration of the right conferred by any such order as should be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order should extend and which should have been registered as thereinafter provided in such manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, except such of the said enactments or such parts thereof as should be excepted in such order.

Registration.

The provisions in regard to registration under the International Copyright Act, 1844, were contained in the 6th section, which required that every author, to entitle himself to the protection thereby afforded, should, within a time to be prescribed in each Order in Council made in pursuance of the Act, register the same at Stationers' Hall. It was necessary to register the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright, the time and place of the first publication, representation, or performance, as the case might be, in the foreign country. One printed copy of the whole of any book, and of any dramatic piece or musical

(*a*) Sect. 4.

composition, in the event of the same having been printed, and of every volume, had to be delivered to the officer of the Company of Stationers.

Special provisions were made as to registration of dramatic pieces or musical compositions in manuscript, also as to engravings and prints and articles of sculpture, and as to registration of anonymous works. Section 8 rendered the provisions of the Copyright Act, 1842, as to inspection, searches, false entries, &c., applicable to the International Register, and by section 9 every entry made in pursuance of the Act of a first publication was to be *primâ facie* proof of a rightful first publication; and the same section made provision as to the expunging or varying an entry grounded in wrongful first publication.

Mode of entry.

The task of making and also of construing the statutable entries was rendered somewhat difficult owing to the circumstances, first, that the statute did not require, or the book of registry in form provide for, any description of the thing to be registered apart from its title; and, secondly, that the register in its actual form was framed with headings applicable only to the registration of a book or other printed matter. In *Wood* v. *Boosey* (*a*), the registration of the pianoforte arrangement of an opera was held to be invalid, because the name of the composer of the opera had been entered in the registry, instead of the name of the person who had made the arrangement. In the opinion of the court, the latter, and not the former was the author of what was registered.

In *Boosey* v. *Fairlie* (*b*), the plaintiffs claimed the exclusive right of representing a comic opera known as 'Vert-vert,' composed by Offenbach, of which a pianoforte arrangement made by Soumis, but not the orchestral parts, had been published in print. There had been entered in the registry the title of the opera, the name and place of abode of Offenbach as composer and owner, and the time and place of the first representation of the opera, and the time and place of the first publication of the pianoforte arrangement. A copy of the pianoforte arrangement, but not of the opera itself, had been delivered to the officer of the Stationers' Company. The Court of Appeal, reversing Bacon, V.-C., held that all the facts required for the registration of the opera itself had been duly entered, and that the additional entry of the time and place of the first publication of the pianoforte arrangement, and the

(*a*) (1868), L. R. 2 Q. B. 340; 3 Q. B. 223.
(*b*) (1877), 7 Ch. Div. 307; 4 App. C. 714.

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delivery of a copy of it, were superfluous acts, which did not affect the registration of the original opera. There was, therefore, a good registration of the unpublished opera, but not of the pianoforte arrangement (*a*).

Order may specify different periods for different foreign countries and for different classes of works.

By the 13th section it is provided that the respective terms to be specified in any Order of Council for the continuance of the privilege to be granted in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of works: and that the times to be prescribed for the entries to be made in the register book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company as thereinbefore mentioned, may be different for different foreign countries, and for different classes of books or other articles.

Orders to be published in Gazette.

Provision was made that every order made under the powers conferred by the Act should be published in the 'London Gazette' as soon as might be after the making thereof, and from the time of such publication should have the same effect as if every part thereof were included in the Act.

Remedies for infringement.

As we have seen above, by section 3 a foreign author is given, in respect of books, the benefit of the provisions of the Literary Copyright Act, 1842, and of any other Act for the time being in force with relation to the copyright in books first published in this country, and by section 4 foreign artists are given the benefit of the Engraving Copyright Acts and Sculpture Copyright Acts or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country. Likewise section 5 applies the Dramatic Literary Property Act and the Copyright Amendment Act to foreign musical and dramatic works.

It is provided by the 10th section that no copies of books wherein there shall be any subsisting copyright under or by virtue of that Act, or of any Order in Council made in pursuance thereof, printed or reprinted in any foreign country, except that in which such books were first published, shall be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright or his agent authorized in writing, and if imported contrary to such prohibition, the same and the importers thereof are made

(*a*) Now, by sect. 4 of the International Copyright Act, 1886, the provisions of the Act of 1844 with respect to the registry and delivery of copies of works are not to apply to works produced in a country in respect of which an Order in Council under the International Copyright Acts have been made except so far as provided by the order.

subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the customs (*a*); and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or, who knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as were respectively prescribed in the Copyright Act, 1842, with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

Pitts v. *George & Co.*

It will be observed that this section, absolutely prohibiting the importation of piracies, expressly excepts from its operation the importation of copies made in the country in which the copyright book was first published. Consequently in a case where the plaintiff was the owner of the British international copyright of a book first published in Germany, and the defendant imported and sold in Great Britain copies printed in Germany by the owner of the German copyright, it was contended that the plaintiff had no remedy. The Court of Appeal, however, decided, reversing Kekewich, J., that section 10 of the International Copyright Act was not intended to be a code containing a complete enumeration of the remedies available for an infringement of copyright in foreign works, but that section 3 made sections 15 and 17 of the Literary Copyright Act, 1842 (*b*), applicable to the book in question, and that as under those sections the owner of the copyright could, if the book had been published in Great Britain, have restrained the importation of these copies, the owner of the British international copyright could do so, though the alleged infringements were "lawfully" printed in Germany (*c*).

(*a*) See 39 & 40 Vict. c. 39, s. 42, The Customs Consolidation Act, 1876.
(*b*) See *ante* p. 194.
(*c*) *Pitts* v. *George & Co.* (1896), 2 Ch. 866. By section 9 of the 15 & 16 Vict. c. 12, the provisions against unlawful importations were extended to translations.

This decision, though no doubt correct in principle, may be found to work harshly in practice. For instance, A. may have been in the habit of ordering, say, German copyright books from B., the proprietor of the copyright in Germany, in order to supply the British market. That is a perfectly lawful proceeding on his part, so long as B. has retained the entire copyright; but one day B., without any notice to A., assigns the British copyright to C. and thereupon A. will become liable, at the suit of C., for unlawfully importing into Great Britain.

Translations under Act of 1844.

The 18th section of the Act of 1844, provided that nothing in that Act should be construed to prevent the printing, publication, or sale or any translation of any book the author whereof and his assigns might be entitled to the benefit of the Act.

But this section was repealed by the 1st section of the 15 Vict. c. 12, so far as it was inconsistent with the provisions of that Act. And the 2nd section of that Act provided that the Crown might by Order in Council direct that the authors of books which were, after a future time to be specified in such order, published in any foreign country to be named in such order, their executors, administrators, and assigns, should, subject to the provisions thereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorized by them, for such time as might be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such books thereinafter mentioned were respectively first published, and, in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorized translation of such part was first published (*a*).

The 15 & 16 Vict. c. 12, further provided in section 3, now repealed by the International Copyright Act, 1886, that, subject to any provisions or qualifications contained in such order, and to the provisions of the Act contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions should be applied for the purpose of preventing the publication of translations of the books to which such order extended which were not sanctioned by the authors of such books, except only such parts of the said

(*a*) And as to representation of translations of dramatic works, see 15 & 16 Vict. c. 12, sect. 4.

enactments as related to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries (*a*).

The 7th section of the 15 & 16 Vict. c. 12 provided that articles of political discussion which had been published in newspapers or periodicals in foreign countries might be made free use of, provided the sources from which they were taken were acknowledged.

Authors publishing abroad only entitled to copyright under International Acts.

The 19th clause of the 7 & 8 Vict. c. 12, which enacted that no author of any book or dramatic piece, which should be first published out of Her Majesty's dominions, should have copyright therein, otherwise than under the provisions of that Act, has been held to apply to British subjects first publishing in a country with which no international convention was subsisting.

And it was held that this section applied to works first published in any foreign country, whether the provisions of the International Copyright Acts had or had not been extended to that country; and accordingly that no author whether a British subject or an alien, was entitled to any other protection for a work first published abroad than that which he might claim under the International Copyright Acts. Therefore where a British subject first produced for representation a dramatic piece of which he was the author, at New York, and he subsequently produced it in London, Vice-Chancellor Sir W. P. Wood held that as he had not complied with the provisions of the 7 & 8 Vict. c. 12 (there being no such international treaty or arrangement as was alluded to by the above section), he had not obtained the copyright to such piece, in England nor the exclusive right to the representation of his drama; and that this was the case though he could not, by any possibility, have complied with the provisions of the said Act, no regulation having been made according to the course pointed out by the Act as to international copyright between the two countries (*b*).

It was contended by the plaintiff that this Act could not annihilate the privileges enjoyed by British subjects under the former Acts. That the word "author" must mean an author in a country affected by the Act, and that the simple performance of a piece in manuscript abroad was not contemplated by the term "publication."

However, the contention failed, the Vice-Chancellor saying:

(*a*) Sect. 3.

(*b*) *Boucicault* v. *Delafield* (1863 9 Jur. 1282; 33 L. J. (Ch.) 38; 12 W. R. 101; 1 H. & M. 597.

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"The 19th clause says, in effect that this Act having been made, if any person, whether a British subject or not, chooses to deprive this country of the advantage of the first representation of his work, then he may get the right, if he thinks fit, under the arrangements which may have been come to with that country he so favours with his representation, pursuant to the 7 & 8 Vict. c. 12. If, however, he does not get it, if he chooses to publish his performance in a country which has not entered into any treaty or made any arrangement for that purpose, he may do so, but this country has nothing more to say to him, and he must be taken to have elected under which of the statutes, which have been made respecting similar subjects, he wishes to come, and by performing his work in one country instead of the other, he is thereby excluded from all advantage of publishing in the other. I cannot see anything to justify me in restraining the provision, or to say that it applies to foreigners, and does not apply to British subjects, because if I did so, I should be bound, by parity of reasoning, to say, that any foreigner publishing first in this country, and acquiring a right under the existing law, would have to be deprived of that right by this Act, whilst a British subject would not be deprived of the benefit. The object of the legislature seems to have been in these cases to secure, in this country, the benefit of the first publication, and to extend to any other country the same benefit, only on certain conditions, namely, that reciprocity shall be afforded, and that the representation shall take place for the first time in England, which may be published afterwards in another country."

In a later case the same plaintiff met with no better fate. The piece in question was 'The Shaughraun,' which had been composed by the plaintiff and first performed in New York, but had never been printed. The court held that the case was covered by the decision in *Boucicault* v. *Delafield*, for representation was publication within the meaning of section 19 (*a*).

Fair imitations or adaptations.

The 15 & 16 Vict. c. 12 also contained a short but most important provision that nothing in the Act should be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country (*b*).

Orders in Council and Conventions.

Pursuant to the Act of 1844 a large number of Orders in

(*a*) *Boucicault* v. *Chatterton* (1876), 5 Ch. Div. 267.

(*b*) Sect. 6. But see now 38 & 39 Vict. c. 12, *post*. The Order in Council was made under the last Act on the 5th Aug., 1875, revoking the application of 15 & 16 Vict. c. 12, as to dramatic pieces first published in France. This Order was revoked by the Order of the 28th Nov., 1887.

Council were promulgated, and the various European countries had also numerous copyright treaties *inter se*. The general purport was to give the authors of works first published in one of the federated states the same privileges in the other states as would be enjoyed if the work had been published there.

The following conventions were entered into by Great Britain:

Prussia . . .	May 13, 1846.	Hamburg (*b*) . .	Aug. 16, 1853.
Saxony . . .	Aug. 24, 1846.	Belgium . . .	Aug. 12, 1854.
Brunswick . .	March 30, 1847.	Prussia, Saxony, &c. (additional) .	June 14, 1855.
Thuringian Union .	July 1, 1847.	Spain (*c*) . . .	July 7, 1857.
Hanover . .	Aug. 4, 1847.	Sardinia . . .	Nov. 30, 1860.
Oldenburg . .	Dec. 28, 1847.	Hesse Darmstadt .	Nov. 19, 1861.
French Republic (*a*)	Nov. 3, 1851.	Italy	Sept. 12, 1865.
Anhalt . . .	Feb. 8, 1853.	Germany (*d*) . .	June 2, 1886.

The Berne Convention.

A complicated state of circumstances arose, for the rights of an author in foreign countries varied according to the particular treaty or Order in Council, and in 1885 an attempt was made by several of the great powers to secure uniformity throughout their dominions, and a Conference was held at Berne with the result that a draft Convention was finally agreed to by the various powers. The Conference then adjourned and re-assembled in 1887, when the Convention, known as the "Berne Convention," was signed. In the meantime the International Copyright Act of 1886 was passed, the object being to enable the Crown to issue Orders in Council embodying the chief features of the new Convention.

The International Copyright Act, 1886.

The Act referred to, after reciting that by the International Copyright Acts the Crown was authorized by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author should have copyright therein during the period specified in the order, not exceeding the period during which authors of the like works first published in the United Kingdom had copyright, provides that the Act of 1886 and the previous International Copyright Acts shall be construed together. Power is given to the Crown to make Orders in Council for the purposes of the earlier International Copyright Acts as well as the Act of 1886, for revoking or altering any Order in Council previously made (*e*). But any order so to be made is not to affect any rights acquired or

(*a*) Amended by Order in Council, 5th Aug., 1875.
(*b*) Amended by Order in Council, 8th Feb., 1855.
(*c*) The treaty with Spain expired and was renewed 11th Aug., 1880.
(*d*) The Orders in Council under the Copyright Conventions have now all been revoked by the Order in Council of 28th Nov., 1887.
(*e*) Sect. 10, sub-sect. 1.

accrued at the date of such order coming into operation, and shall provide for the protection of such rights (*a*).

The Berne Convention was signed on the 5th September 1887, by Great Britain, and on the 28th November of the same year an Order in Council was issued giving full effect to the Convention throughout the British dominions, and the Convention, translated into English, is placed in a schedule to the order. This order is to be construed as if it formed part of the International Copyright Act, 1886, and all the previous Orders in Council were repealed.

The "Additional Act of Paris."

In the year 1896 another Conference of the Powers was held in Paris to consider certain proposed modifications of the original Convention, and this resulted in what is known as the "Additional Act of Paris, 1896," modifying the Berne Convention of 1886 in certain particulars, the most important being with regard to translations.

By Order in Council, dated 7th March, 1898, Great Britain adopted the "Additional Act of Paris," but she was unable to accept an "Interpretative Clause" that was agreed to by the other Powers (*b*).

The countries at the present day bound by the Berne Convention, and forming what is known as the Copyright Union, are: Great Britain with her colonies and possessions, Belgium, Denmark, France with Algeria and her colonies, Germany, Hayti, Italy, Japan, Luxemburg, Monaco, Norway (*c*), Spain with her colonies, Switzerland, and Tunis.

Fundamental principle.

The fundamental principle of the Berne Convention is to be found in Article II., which, as modified by the Act of Paris, provides that authors of any of the countries of the Union or their lawful representatives, shall enjoy in the other countries for their works, either not published or published for the first time in one of those countries, the rights which the respective laws do now or may hereafter grant to natives, except that the term of protection is not to exceed that in the country of origin. Thus the rights of foreigners are to be assimilated to the rights of natives, except in the matter of length of copyright term.

Works protected under

The works which are protected under the Berne Convention

(*a*) Sub-sect. 2.

(*b*) The reasons for Great Britain's non-adherence to the "Interpretative Clause" were chiefly because her domestic law permits dramatization of novels and makes public performance of dramas equivalent to publication. See text of the Interpretative Clause, Appendix.

(*c*) Norway is not a party to the "Additional Act of Paris," but has signed the Interpretative Clause. For dates of adherence of various countries, see Appendix B.

Berne Convention.

are books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engineering; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture or science in general; in fact, every production whatsoever in the literary or artistic domain which can be published by any mode of impression or reproduction (*a*) (Article IV.). By Article IX. the provisions of the Convention are extended to public representation of dramatic works and the lyric drama, whether the works in question have or have not been published, and they are also made to apply to musical pieces, but subject to an obligation on the author to state that he forbids public performance.

By a clause added to Article II. by the "Additional Act of Paris" posthumous works are included amongst protected works.

It is an essential condition to protection within the Union that a work shall be published within one of the countries of the Union, but it is not necessary that the author shall be a subject of the country in which he publishes, or indeed of any country belonging to the Union (Article III.). This Article, as originally framed, gave copyright, in the case of an author publishing in a foreign country, to his publisher, but this has been altered by the "Additional Act," and the copyright is now vested in the author himself.

In order that an author may enjoy protection in the other countries of the Union he must be actually protected in his own country (*b*). The author is relieved from all formalities prescribed by the laws of the other countries, but he must comply with the conditions and formalities prescribed by law in the country of origin (*c*). If a work has the name of the author indicated on it in the accustomed manner, he is *primâ facie* entitled to the copyright, but the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that those formalities have been accomplished in the country of origin (*d*).

Country of origin.

The "country of origin" is defined to be that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted (*e*).

(*a*) As to photographs, see Art. I. of "Final Protocol," and Art. II. of "Additional Act"; as to choregraphic works, see Art. II. of "Final Protocol."

(*b*) This seems reasonably clear from the second paragraph of Art. II., though it is nowhere expressly so stated.

(*c*) Art. II. (*d*) Art. XI.

(*e*) Art. II. *Quære*, if one of the countries does not grant any protection?

This clause may give rise to difficulties, for it is not always easy to determine the exact date of publication. The country of origin for unpublished works is the country to which the author belongs.

Period of protection.

The Convention does not prescribe any uniform or minimum term of protection for countries of the Union, but leaves this matter to be determined by the local legislation of the various countries. An author cannot, however, claim the benefit of a greater length of protection accorded by the legislation of the country in which he seeks protection, if it exceed that conferred by the legislature in the country where he publishes (*a*).

Translations.

The "Additional Act of Paris" has made an important alteration in the original Convention with regard to translations. Article V. of the original Convention fixed a period of ten years from the first publication of the work during which the author should enjoy the exclusive right of translation. This was a minimum period, but any State was at liberty to accord a longer period of protection, and—though the contrary has sometimes been contended—the effect of section 5 of the International Copyright Act, 1886, and the Order in Council thereunder, probably was to give, in Great Britain, more extensive protection than was required by the Convention as originally drafted in 1886.

Article V. of the Convention has, however, now been altered by the "Additional Act," and brought into accordance with what is believed to have been the law in Great Britain before the "Additional Act" was ratified. As that Article now stands it confers upon authors of any of the countries of the Union, or their representatives, the exclusive right of making or authorizing, in the other countries of the Union, translations of their works during the whole duration of the right in the original work, but the exclusive right of translation is to cease to exist when the author has not within a period of ten years from the first publication of the original work published in one of the countries of the Union, a translation in the language for which protection is claimed. Authorized translations are protected as original works, but if the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers (*b*).

Newspapers.

Newspapers are dealt with by Article VII., which has been remodelled by the "Additional Act," and now provides that serial novels ('Romans-feuilletons'), including novels published

(*a*) Art. II.
(*b*) Art. VI. It was this Article that prevented Norway from adhering to the "Additional Act."

in newspapers or periodicals of one of the countries of the Union, cannot be reproduced, in original or translation, in the other countries without the authorization of their authors or their representatives. This prohibition applies equally to other articles whenever reproduction is expressly forbidden, and for periodicals it is sufficient if the prohibition is made in a general way, at the beginning of each number. In the absence of prohibition, reproduction is permitted on condition of indicating the source, and the prohibition cannot, in any case, apply to articles of political discussion, to news of the day, or current topics.

Infringement.

As to infringement, this is a matter which the Berne Convention leaves generally to the domestic law of each country, subject to the condition that foreign authors are to have the rights granted to natives (*a*). Article XI., however, provides that amongst piracies shall be included indirect appropriations of literary or artistic works, such as adaptations, arrangements of music, &c., when they are only the reproduction of a particular work in the same form, or in another form with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work. Article VIII. also provides that as regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes or for chrestomathies (*b*), the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

It is, further, to be understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, are not to be considered as constituting an infringement of musical copyright (*c*).

Remedies.

Pirated works may be seized by the competent authorities of the countries of the Union where the original work has a right to legal protection, but the seizure is to take place conformably to the domestic legislation of each country (*d*).

From what date Convention takes effect.

The Convention came into force three months after the exchange of ratifications (*e*), and is to remain in force for an

(*a*) Art. 1.

(*b*) *i.e.*, "a collection of choice passages from an author or authors, especially one compiled to assist in the acquirement of a language." Dict.

(*c*) Final Protocol, Clause 3. It is sometimes contended that perforated rolls for æolian organs are not "instruments" for mechanically reproducing musical airs. And it has been so held in Germany, see *post*.

(*d*) Art. XII. as modified by the "Additional Act." The original article only provided for seizure on importation, but the modified clause provides for seizure in the interior also.

(*e*) Ratifications were exchanged on the 5th Sept., 1887.

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indefinite period, until the termination of a year from the day on which it may have been denounced (*a*).

It is provided by Article XIV. that the Convention is to apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin, but only subject to the stipulations on this head which may be contained in special Conventions. In the absence of such stipulations any country may by its domestic legislation regulate the manner in which this principle is to be applied (*b*).

Berne Convention only provides a minimum protection.

Although the Berne Convention provides a minimum protection which every State belonging to the Union must accord to authors belonging to the other countries of the Union, there is, of course, no reason why any State should not grant more extensive protection, and Article XV. of the Convention expressly permits the various countries of the Union to enter into separate and particular arrangements with each other, provided that such arrangements confer upon authors more extended rights than those granted by the Union, or embody other stipulations not contrary to the Convention. The local laws of some countries belonging to the Union do confer upon authors advantages superior to those provided in the Convention, particularly in the matter of the right of translation. Where this occurs, such State ought, except where otherwise provided in the Convention, to accord to authors resident in other countries of the Union the benefit of these more favourable provisions, by virtue of the fundamental principle above alluded to, and to be found in Article II. of the Convention, which assimilates the rights of foreigners to those of natives.

Rights of British authors in foreign countries.

It follows from what has been said that when an author of one country of the Union desires to ascertain his rights in respect of his literary or artistic work in another country of the Union he must consult the four following sources (*c*):

1. The law of the country of origin, to ascertain the term of protection and the existence or non-existence of formalities necessary to be complied with.

2. The Berne Convention, which stipulates a minimum protection.

3. The law of the country of importation, that is to say, the country where protection is sought, for everything which

(*a*) Art. XX. Art. XVIII. provides for new accessions to the Union.
(*b*) Art. XIV. and Clause 4 of the "Final Protocol." See Sect. 6 of International Copyright Act, 1886.
(*c*) See an article in 'Le Droit d'Auteur' (the official magazine of the Berne Convention), 1895, p. 162.

relates to the nature of the protection to which he is entitled, and, in particular, to see whether it is in any points more favourable than the Convention.

4. The particular treaties between two or more States being parties to the Union, provided they accord more extensive protection than the Convention (*a*).

Foreign rights not protected in English courts.

The English courts have no jurisdiction to restrain a threatened infringement of copyright in a foreign country, even though that country be a member of the Copyright Union, but proceedings must be taken in the courts and according to the law of the foreign country (*b*).

Rights of foreign authors in Great Britain and her colonies.

Turning now to the rights of foreign authors in Great Britain and her colonies, a somewhat peculiar state of affairs is produced by the fact that, for constitutional reasons, an Act of Parliament was necessary before Great Britain could become a party to the Berne Convention. The Act referred to is the International Copyright Act, 1886 (*c*), to which we have already alluded and which incorporates the earlier International Copyright Act of 1844 (*d*). Under the powers conferred by these Acts the Order in Council of 28th November, 1887, was passed decreeing that the Berne Convention set forth in the schedule to the order should, as from the commencement of that order "have full effect throughout Her Majesty's dominions"; and the Order in Council of 7th March, 1898, similarly directs that the "Additional Act of Paris" is to have "full effect" throughout the dominions.

The International Copyright Acts.

In order, therefore, to ascertain the rights of foreign authors in Great Britain it is necessary to have regard not only to the Berne Convention itself, but also to the International Copyright Act, 1886, and the two Orders in Council above referred to, and it is most unfortunate that these differ in their terms upon matters as to which there should have been absolute identity. It seems clear, however, that if these differences cannot be reconciled, the statute must prevail over the Orders in Council and the Berne Convention.

The earlier International Copyright Act, 1844, as we have seen, conferred upon the Crown the power to direct by Orders in Council that authors of works published in foreign countries should have copyright therein within the dominions of the Crown for such period as might be named in such order, not

(*a*) Inasmuch as Great Britian only possesses one copyright treaty, and that with Austria, which is not a member of the Union, British authors are not concerned as to this last source.

(*b*) '*Morocco Bound*' *Syndicate* v. *Harris* (1895), 1 Ch. 534.

(*c*) 49 & 50 Vict. c. 33. (*d*) 7 & 8 Vict. c. 12.

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exceeding the term of copyright to which British authors are entitled (*a*), and that in such cases the various copyright Acts should, subject to any limitation that might be contained in the orders, apply to the foreign works (*b*). It is conceived, therefore, that no additional power was necessary to enable the Crown to give effect to the fundamental principle of the Berne Convention, assimilating the rights of foreigners to the rights of natives; but sect. 2 and sub-sect. (3) of the Act of 1886 has enacted that "the International Copyright Acts and an order made thereunder shall not confer on any person *any greater right or longer term* of copyright in any work than that enjoyed in the foreign country in which such work was first produced," and similar words are to be found in the Order in Council of 28th November, 1887.

What is the meaning of "greater right."

The provision as to the longer term of copyright is clearly in accordance with the Berne Convention, but it is not easy to find anything in the Berne Convention to justify the limitation of the foreign author's rights to no "greater right" than he enjoys in his own country. The only other limitation to the foreign author's rights, contained in Article II. of the Convention, is that they are to be "subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work." If the words of the Act were intended to refer to this limitation, they have been most unfortunately chosen.

Hanfstaengl v. *Empire Palace.*

The question as to the meaning of these words was raised in the case of *Hanfstaengl* v. *Empire Palace* (*c*). The plaintiff was the owner of the copyright in certain pictures first produced in Germany. These pictures had been represented on the stage of an English theatre in the form of tableaux vivants, and the defendants, who were the proprietors of an illustrated newspaper, published in their paper sketches of the tableaux vivants, with explanatory letter-press. Evidence was adduced to the effect that, according to German law, the insertion of copies of works of art in literary works was not prohibited, provided the literary matter was the chief object, and the illustrations were only subsidiary to and for the purpose of explaining the text. It was contended, therefore, by the defendants that even if the insertion of these sketches in their newspaper were a piracy according to English law, it was not a piracy according to German law, and that inasmuch as by section 2 of the Act of 1886 the defendant could not have a

(*a*) Sect. 2.
(*b*) Sects. 3, 4, and 5, *ante*, p. 547.
(*c*) (1894), 3 Ch. 109.

"greater right" in England than in Germany, the plaintiff could not succeed in his action.

In the event it did not become necessary for a decision of the case to determine the meaning of the words, for Mr. Justice Stirling, before whom the case first came, held that the defendants' sketches were infringements of the plaintiff's copyright, both according to the law of England and to the law of Germany; whilst the Court of Appeal held, reversing Stirling, J., that the defendants' sketches were not infringements, even according to English law (*a*). Stirling, J., however, seems to have been of opinion that if the German law had been less favourable to the plaintiff than the English law he could not have claimed the benefit of the more extensive protection, and in the Court of Appeal Lord Justice Lindley remarked (*b*), "If the German law of copyright confers upon the plaintiff a less extensive right in his pictures than the right conferred on British authors by the Act to which I have already alluded, the extent of the plaintiff's rights must be measured by the German standard, and not by the English standard, and must be restricted accordingly." Lopes, L.J., expressed his agreement with this view of the law.

If this view of the law should be ultimately held to be correct it will lead to numberless difficulties, for in every case where the international right is in question, the English courts will have to inquire into and decide questions of foreign copyright law. Foreign law is in English courts a matter of evidence, but if foreign copyright law is anything like as intricate as English copyright law, it will be a comparatively easy matter to produce contradictory evidence upon which English courts will not find it easy to base a decision (*c*). But an even more important objection to such a construction is that it would involve a distinct breach of Great Britain's treaty obligations and would imperil her position as a member of the Copyright Union. The fundamental principle of the Berne Convention is, as we have already pointed out, assimilation of the rights of foreigners to the rights of natives, except as to length of term of copyright and "subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of work." The principle of the Convention of Montevideo of 11th July, 1889, on the other

(*a*) See this case more fully dealt with on this point, *ante* p. 391.
(*b*) (1894), 3 Ch. at p. 125.
(*c*) In the case referred to above Lindley, L.J., remarked, "I confess that I do not feel sufficiently sure of the German law to be able to base my decision upon it."

hand, is that the law of the country of origin follows the work into the countries of the other members of the Union. This latter principle was, it is believed, deliberately rejected by the delegates of the various countries which took part in the deliberations leading up to the Berne Convention of 1887, yet this very principle would be established in England by a decision in accordance with the views expressed by Lord Justice Lindley. If such a decision were then to be given, it would be incumbent upon Parliament to alter her legislation so as to give proper effect to the true principle of the Berne Convention (*a*).

It is, we think, tolerably clear that the Legislature never intended, by the expression referred to, to restrict rights of foreigners in the manner suggested, but the words of the Act must prevail over the intention, unless another meaning can be found for the words. Having regard, however, to the inconveniences above alluded to the courts will, it is thought, strive to find such other meaning and even strain the language, if necessary, in the endeavour. It has been suggested that the words "greater right" mean no more than "longer term," but that would be to render them mere surplusage. A more plausible suggestion is that they refer to the other point mentioned in the Berne Convention, upon which it is permissible to have regard to the law of the country of origin, viz., to see what "formalities and conditions" are thereby prescribed, and whether the author has any right at all, so that if the foreigner has no copyright in his own country, he is not to have any "greater right" in Great Britain (*b*). It is to be hoped when the point again comes before the courts that some solution will be found that will obviate the undoubted difficulties that the expression gives rise to and give that "full effect" to the Berne Convention which the Order in Council directs.

In other respects the International Copyright Acts and the Orders in Council published thereunder seem to have fairly carried out the Berne Convention, but there are still some other unfortunate differences in language.

Rights of foreigners

Some difficulty seems to have been experienced with regard

(*a*) See the article, already referred to, in 'Le Droit d'Auteur,' 1895, p. 162.

(*b*) Great Britain has a separate copyright treaty with Austria, and in the Order in Council giving effect to this treaty is to be found identically the same expression as to "greater right" and "longer term," whilst by the treaty itself it is provided "that these advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published."

to Article III. of the original Convention, which provided that the publisher, and not the author, should be entitled to the copyright when the author did not belong to any country of the Union. The difficulty, which was met by section 2 (2) of the Act of 1886 and clause 4 of the Order in Council, no longer exists, since the "Additional Act of Paris" has provided that in such cases the copyright is now to vest in the author.

not belonging to the Union.

With regard to works published simultaneously in two or more countries of the Union the work is, according to clause 5 of the Order in Council, deemed to be produced in that one of those countries in which the term of copyright in the work is shortest. This is practically in accordance with Article II. of the Convention, but neither the Convention nor the Order in Council is specific as to what is to happen if one of the countries grants no term of protection at all to the particular production. However, an author is not likely to publish simultaneously in a country which grants no protection, and a more serious difficulty is raised by section 3 (2) of the Act which says that where in the case of simultaneous publication a work is deemed to be published in a foreign country, and not in the United Kingdom, then "the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom." The object of the provision in the Berne Convention was simply to determine the period of protection, but this section of the Act is not so limited, and would appear to raise similar difficulties to those created by the expression "greater right" in section 2.

Simultaneous publication.

Throughout the International Copyright Act the expression used with regard to works is "produced," and this is interpreted by section 11 to mean, as the case requires, "published, or made, or performed, or represented." In a case, in which infringement of the copyright in a picture was alleged, it appeared that the original picture had been painted in Italy, but, as the plaintiff contended, first published in Germany. Registration is necessary in Italy, but not in Germany, and the plaintiff had not registered. The defendant urged that this omission was fatal, arguing that the words in the interpretation section of the Act must be construed *reddendo singula singulis*, that the appropriate word for a picture was "made," and not "published," and that the picture in this case having been *made* in Italy the conditions prescribed by the law of that country must be complied with, even if it were true that the

Country of origin.

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work had been first *published* in Germany. The Court of Appeal, however, refused to follow this argument, holding that, in this instance, the English statute had not departed from the provisions of the Berne Convention, and that in order to determine the country of origin of a work the place of publication must be settled (*a*).

Registration and other formalities.

According to the Berne Convention, authors belonging to a country of the Union are to be entitled to copyright in the other countries of the Union, "subject to the accomplishment of the 'conditions' and formalities prescribed by law in the country of origin of the work" (*b*), and it is further provided (*c*) that, in order to entitle authors to institute proceedings against pirates before the courts of the various countries of the Union, "it will be sufficient that their name be indicated on the work in the accustomed manner," but the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law *in the country of origin* have been accomplished. The section which refers to registration in the International Copyright Act, 1886, is section 4, which provides that "where an order respecting any foreign country is made under the International Copyright Acts, the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to copies of works produced in such country, except so far as provided by the order." We have already seen that the 7 & 8 Vict., which dealt not merely with the copyright in books, but also with the copyright in prints, engravings, sculptures, and other works of art, did require that foreigners should register their works in a special international register, though in 1844, when the Act was passed, there was no existing provision as to registration of copyright in engravings or in sculptures first published in England.

Formalities necessary under the Act of 1844.

Under the Act of 1844 authors of works in France claiming copyright in this country were held not exempt from conditions affecting authors of works in this country (*d*), and so the proprietors of a foreign print had to comply with the provisions of the Engravings Acts, and the proprietor's name had to be printed thereon (*e*).

This clearly was the view taken by Lord Hatherley in *Cassell* v. *Stiff*, which he thus expressed: "He," that is the author, "is to have the same protection which the author of

(*a*) *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 317.
(*b*) Art. II. (*c*) Art. XI.
(*d*) *Cassell* v. *Stiff* (1856). 2 K. & J. 279.
(*e*) *Aranzo* v. *Mudie* (1856), 10 Ex. 203.

any other book would obtain under an Order in Council. He would obtain in that manner protection subject to all the other provisions of the statute, otherwise authors of foreign works would be placed in a better position than those in this country, which certainly was not intended. There is a careful and jealous provision that no author of a foreign work shall be in a better position in this country than authors of works here are. It was not intended to give them anything more. The 3rd section of the statute provides that under an Order in Council the foreign author is to be subject to the provisions of the general Copyright Acts, unless it should be otherwise specified in the order."

Under Act of 1886.

The Order in Council of 28th November, 1887, not having provided for either registration or delivery of copies of works, it is clear from section 4 of the Act of 1886 no such registration or delivery is necessary in the case of foreign books, musical or dramatic compositions or of prints, engravings, or sculptures. Nor, it is submitted, are any other formalities prescribed by English law necessary in the case of foreigners, except that, as provided by Article IX. of the Berne Convention, the owner of the copyright in musical works must expressly declare on the title-page or commencement of the work that he reserves the right of public performance, if he desires to do so (*a*).

As to paintings, drawings, and photographs.

It has been contended that paintings, drawings, and photographs stand in a different category from the other works referred to, and that, in their case, registration is necessary even under the Act of 1886. It must be remembered that at the passing of the Act of 1844 there was no copyright in paintings, drawings, and photographs, and the Fine Arts Copyright, 1862 (*b*), in conferring such copyright, provided that a special register should be kept at Stationers' Hall, in which the proprietors of the copyright in such works were to register. This register was distinct from the register created by the 5 & 6 Vict. c. 45 for literary works. And the 12th section of the Act of 1862 (*c*) provided that such Act should be considered as including the provisions of the International Copyright Act, 1844 (*d*), in the same manner as if such provisions were part of the Act of 1862. Consequently section 4 of the Act of 1844, and also section 6 which provided for

(*a*) In a case of *Maud* v. *Coronet Theatre* ('Times' newspaper, 11th Dec., 1901, 4th Feb., 1903), it seems to have been suggested that this reservation must be in the English language.

(*b*) 25 & 26 Vict. c. 68.

(*c*) Partly repealed by the International Copyright Act, 1886.

(*d*) 7 & 8 Vict. c. 12.

registration, not in the register directed to be kept by the Act of 1862, but in the book kept by the Stationers' Company under the authority of the Copyright Act, 1842, were introduced into the Act of 1862 in the same manner as if they had been there repeated.

Section 4 of the Act of 1886 provides, as we have seen, that where an order is made under the "International Copyright Acts," the provisions of "those Acts" as to registry and delivery of copies of works are not to apply, except so far as provided by the Order in Council. The term "The International Copyright Acts" by section 1 means the Acts specified in the second part of the first schedule to the Act, together with the enactment specified in the second part of the schedule, and these consist of the Acts of 1844, 1852, 1875, and section 12 of the Act of 1862 (*a*). Consequently section 4 is open to the construction that any provisions with respect to the registry and delivery of copies which are introduced by the International Copyright Acts are not to apply to works produced in a foreign country, except so far as provided by the order, that is to say, unless there is found in the Order in Council something intimating that these provisions as to registration are to apply, but that the provisions of the Copyright Acts, as distinct from the International Copyright Acts, apply unless there is something in the order excepting from the obligation imposed by the first mentioned Acts. In other words, it is open to the construction that the 4th section of the Act of 1886 does not deal with registration under the general Copyright Acts, but under the International Copyright Acts only, and that though there is nothing in the Order in Council of the 28th Nov., 1887, requiring registration under the International Copyright Acts, yet as there is nothing in that order which excepts the enactments with respect to registration contained in the general Copyright Acts, these latter apply. The points above mentioned were fully dealt with in the case of *Fishburn* v. *Hollingshead* (*b*), where the question arose in respect of a painting exhibited by the defendants, which was held to be a colourable imitation of the picture of 'Jerusalem and the Crucifixion of Christ,' belonging to the plaintiffs. The plaintiffs had, in fact, purported to register under the Act of 1862, and though the defendants contended the contrary, Mr. Justice Stirling held that the registration was valid. The point, therefore, was

Fishburn v. *Hollingshead.*

(*a*) See the Short Titles Act, 1892, which includes, under the term International Copyright Acts, the Acts of 1844, 1852, 1862, 1875, and 1886.

(*b*) (1891), 2 Ch. 371; 7 T. L. R. 263.

not necessary to the decision of the case, but as it had been argued at great length, the learned judge dealt with it in his judgment. The view he took was that the Legislature provided jealously that no author of a foreign work should be in a better position in this country than a British author, and that though the necessity for registration under the "International Copyright Acts" was removed by section 4 of the Act of 1886 that section did not remove the necessity for registration under the "Copyright Acts." The reasoning of the learned judge undoubtedly involved that before the passing of the Act of 1886 a foreigner had to make a double registration in the case of paintings, drawings, and photographs—under the International Act of 1844 and the Fine Arts Act of 1862, and that whilst the Act of 1886 did away with the necessity for registration under the former Act, it did not under the latter. Such double registration was, however, never effected in practice, it always having been considered that, by virtue of section 12 of the Act of 1862, registration in the international register was sufficient.

In the last edition of this work it was contended that the decision in *Fishburn* v. *Hollingshead* was wrong, and this contention has been affirmed by subsequent cases.

Fishburn v. *Hollingshead* overruled.

The case was first doubted by Smith and Grantham, J.J., in the argument in *Moul* v. *Groenings* (*a*) (though the doubt is not reported), and in a County Court case it was not followed (*b*). The point then came before Charles, J., in the case of *Hanfstaengl Art Publishing Co.* v. *Holloway* (*c*). The plaintiffs were the proprietors of the copyright, both in Germany and the United Kingdom, of a painting called the 'Guardian Angel,' which had been first published in Germany. The defendants, who were the proprietors of Holloway's pills, had caused photographs of the picture to be copied on to cards which they issued for advertisements. It was not denied that the copies were infringements of the plaintiffs' copyright, but it was contended that the plaintiffs could not recover as they had not registered their copyright under the Fine Arts Copyright Act. This contention the learned judge rejected, holding that a foreigner had never been under any obligation to register save in the international register, and that the necessity for that had been abolished by the Act of 1886. The object of that Act seemed to him to be clear. It was not designed to impose disabilities, but rather, if they existed, to remove them, and to leave the

(*a*) (1891), 2 Q. B. 443.
(*b*) *Moul* v. *Devonshire Park Co.*, 'Law Times,' Sept. 19, 1891.

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foreign and native author as nearly as might be on an equality. The foreigner who complied with the requirements of the law of his own country was to be protected in England; the Englishman who complied with the requirements of English law was to be protected in the foreign countries of the Copyright Union.

The decision of Charles, J., in *Hanfstaengl Art Co.* v. *Holloway* has since been approved by the Court of Appeal in *Hanfstaengl* v. *American Tobacco Co.* (*a*), and *Fishburn* v. *Hollingshead* may, it is thought, be taken as overruled on this point.

Translations.

The 5th section of the International Copyright Act, 1886, provides that where a work being a book or dramatic piece is first produced in a foreign country to which an Order in Council applies, the author or publisher, as the case may be, shall, unless otherwise directed by the order (and the order does not direct otherwise) have the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work. But it is provided that if after the expiration of ten years, or any other term prescribed by the order next after the end of the year in which the work, or in the case of a book published in numbers, each number of the book (the last number, according to the Convention, section 5), was first produced (*b*), an authorized translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease. And it is also provided that the law relating to copyright, including the Act of 1886, shall apply to a lawfully produced translation of a work in like manner as if it were an original work, and that such of the provisions of the International Copyright Act, 1852, relating to translations as are unrepealed by the Act of 1886 (*i.e.*, ss. 6 & 7 of 15 Vict. c. 12, but as to s. 6, see Order in Council, s. 6), shall apply in like manner as if they were re-enacted in the Act of 1886.

The provisions of section 6 of the Act of 1886 were more generous than Article V. of the Berne Convention as originally agreed to in 1886, but seem to be in accord with that Article as modified by the "Additional Act of Paris," which, by Order in Council of 7th March, 1898, was directed to have "full effect"

(*a*) (1895), 1 Q. B. 347.
(*b*) By the Act 15 & 16 Vict. c. 12, s. 8, the period was one year. See, too, *Osborne* v. *Vizetelly* (1885), 1 T. L. R. 17.

throughout the British dominions. The result seems to be that a foreigner has the right to prevent others from making or importing into the United Kingdom translations in the English language throughout the whole period during which the original work is protected, provided an authorized translation in the English language of such work has been produced within ten years, but if no authorized translation appears within that period, then the right of translation falls into the public domain. It is submitted also, that if an authorized translation in another language than English is published in any of the countries of the Union, within the same period, unauthorized translations in that language are forbidden in the United Kingdom during the period for which the original work is entitled to protection.

Dramatic translations under the earlier Acts.

Under the earlier International Copyright Acts the authors of foreign plays (*i.e.*, plays first published abroad) might prevent the representation in the British dominions of any unauthorized translation, for a period not exceeding four years from the first publication or representation of an authorized translation, but nothing in these Acts was to prevent "fair imitations or adaptations to the English stage" of a foreign play or musical composition (*a*).

In the case of *Wood* v. *Chart* (*b*), 'Frou-frou,' a French comedy, was registered in England, and an English version was made, published, and registered. Mr. Wood, the plaintiff, became assignee of all English rights, both of the authors and translators. An unauthorized version was made and publicly acted by the defendants. Thereupon the plaintiff filed a bill for an injunction and an account. The authorized English version of the plaintiff was entitled 'Like to Like,' the scene transferred to England, the names of the characters changed to English names, and certain alterations and omissions made in the dialogue, but the plot and the main incidents continued the same. Vice-Chancellor James dismissed the bill, holding that the requisitions to entitle the plaintiff to the benefit of the Acts had not been complied with, for 'Like to Like' was not a "translation" within the meaning of the Act, but rather "an imitation or adaptation to the English stage" (*c*).

Adaptations now restricted.

The scope of the 6th section of the International Copyright Act, 1852, as to fair imitations or adaptations to the English stage of any dramatic piece or musical composition published

(*a*) 15 & 16 Vict. c. 12, s. 6.
(*b*) (1870), L. R. 10 Eq. 193; 18 W. R. 822; 22 L. T. 432; 39 L. J. Ch. 641.
(*c*) Cf. *Lauri* v. *Renad* (1892), 3 Ch. 402, 414.

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in any foreign country was restricted by the 38 & 39 Vict. c. 12, by which the Crown was empowered by Order in Council to direct that the 6th section of the Act of 1852 as to fair adaptations should not apply to dramatic pieces first represented in any foreign country.

By the Order in Council of the 28th November, 1887, section 6, the last-mentioned section was acted upon, and the Berne Convention declares (*a*), as we have seen, that indirect appropriations such as adaptations, arrangements, of music, &c., are especially included among the unlawful reproductions to which the treaty is to apply where they are only the reproduction of a work in the same form or in another form with some non-essential alterations, additions, or abridgments so made as not to confer the character of a new original work. Henceforth, adaptations such as that in *Wood* v. *Chart*, will be subject to be restrained. This is in accordance with the view of Vice-Chancellor James in that case, when he stated that though the version of 'Frou-frou' was not a translation within the meaning of the Act of 1844, it would have been an infringement of the author's copyright.

What is a translation?

As to what is a translation some difficulty has arisen. Dryden reduces translations to three heads: first, that of metaphrase, or turning an author word by word, and line by line, from one language into another. Thus, or near this manner, was 'Horace, his Art of Poetry,' translated by Ben Jonson. The second way is that of paraphrase, or translation with latitude, where the author is kept in view by the translator so as never to be lost, but his words are not so strictly followed as his sense; and that, too, is admitted to be amplified, but not altered. Such is Mr. Waller's translation of 'Virgil's fourth Æneid.' The third way is that of imitation, where the translator (if now he has not lost that name) assumes the liberty, not only to vary from the words and sense, but to forsake them both as he sees occasion; and taking only some general hints from the original, to run divisions on the groundwork, as he pleases. Such is Mr. Cowley's practice in turning two odes of Pindar, and one of Horace, into English (*b*).

Transitory provisions.

Transitory provisions are, by the Berne Convention, expressly left to the legislatures of the various countries of the Union. Article XIV. states that "under the reserves and conditions to be determined by common agreement," the Convention is to apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country

(*a*) Art. X. (*b*) Dryden's Works (Scott's Ed.), xii. 11.

of origin. By clause 4 of the Final Protocol the "common agreement" referred to by Article XIV. of the Convention means that the Convention is to apply to works not fallen into the public domain according to stipulations contained in special Conventions, and that in the absence of such stipulations between any countries of the Union the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to apply.

Accordingly by section 6 of the International Copyright Act, 1886, it is provided that where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation (*i.e.*, 6th December, 1887) (*a*) are to be entitled to the same rights and remedies as if the said Acts and that Act and the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council (*i.e.*, 28th November, 1887) (*a*) lawfully produced any work in the United Kingdom, nothing in section 6 is to diminish or prejudice any rights or interests arising from or in connection with such production which were subsisting and variable at the said date.

Clause 7 of the Order in Council of 28th November, 1887, in revoking all previous copyright treaties between Great Britain and foreign countries, provides that neither this revocation, nor anything else in the order, shall prejudicially affect any right acquired or accrued before the commencement of that order, by virtue of any order thereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same in like manner as if that order had not been made. Similarly the Order in Council of 7th March, 1898, putting the additional "Act of Paris" into force in British dominions, provides (clause 5) that nothing in that order is to prejudicially affect any right acquired or accrued before the commencement of that order by virtue of the Order in Council of 28th November, 1887, or otherwise, and any person entitled to such right is to continue entitled thereto and to the remedies for the same as if that order had not been made; and (clause 6) the author of any literature or

(*a*) This date is, of course, only applicable to the countries of the original signatories to the Convention—Belgium, France, Germany, Hayti, Italy, Spain, Switzerland, and Tunis. Various other dates are applicable to the countries that have since joined the Union, according to the dates of the respective Orders in Council made on their adhesion. The dates will be found in Appendix B.

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artistic work first produced before the commencement of that order is to have the rights and remedies to which he is entitled under section 6 of the International Copyright Act, 1886.

Effect of sect. 6.

If it were not for the decision in *Lauri* v. *Renad* (*a*), it would seem fairly clear that the intention of section 6 of the Act, combined with Article XIV. of the Convention, is that authors whose rights have not fallen into the public domain *in the country in which their works were first published* at the date of the Convention coming into operation in the British dominions are to be protected in England, with a saving in respect of rights and interests which were "valuable and subsisting" at the said date. The decision referred to seems, however, to militate against this view.

Lauri v. *Renad.*

The facts in *Lauri* v. *Renad* were as follows: The plaintiff claimed to have acquired by assignment and registration the right of representation both of the English and French versions of a play or pantomime known as 'The Voyage in Switzerland'; or, 'The Swiss Express,' which was originally written in French in 1879 and called 'Le Voyage en Suisse' and translated into English later in the same year. The action was for an injunction to restrain the defendants, a Parisian troupe of pantomimists, from performing a version of the same play, translated from the original in 1891, at a theatre in Nottingham. Section 4 of the International Copyright Act, 1852, having provided that a foreign author should enjoy the exclusive right of translation for five years only from the publication of an authorized translation, it was contended on behalf of the defendants that this exclusive right expired in 1884; that, consequently, at the date when the Berne Convention came into operation, the right of translation had fallen into the public domain in England; and that the Act did not revive a lapsed right. Mr. Justice Kekewich refused on this ground to grant the interlocutory injunction sought by the plaintiff, and, upon appeal, his appeal was rejected.

Lord Justice Lindley said that the only enactment which could avail the plaintiff was section 6 of the Act of 1886; but there was a fundamental rule of English law that no statute shall be given a retrospective operation unless its language is such as plainly to require such a construction, and that no statute shall have a greater retrospective operation than its language renders necessary; and it would be a violation of these rules if that section were to be construed so as to

(*b*) (1892), 3 Ch. 402.

revive or recreate a right which had expired before the Act was passed, or to confer a new right on the owners of an expired right without any fresh act done by him. Mr. Justice Kay was of opinion that section 6 must certainly have some retrospective meaning and operation, but he could not think that its true construction was to take away from the public the right which they had as to this drama published in 1879 under the legislation which existed prior to 1886.

Examination of decision in *Lauri* v. *Renad*.

It is submitted with great deference that this decision was wrong. It must be remembered that the defendants' translation had not been made before 1886; if it had, then, no doubt they would have had a "valuable and subsisting" interest in their translation, in the enjoyment of which they would have been protected by the final proviso to section 6. The fundamental rule of English law stated by Lord Justice Lindley cannot be denied, but the question is whether the language of the statute does not require a retrospective operation to be given to it. Article XIV. of the Berne Convention must, it is submitted, be treated as though it were part of the statute, for the Order in Council of 1887 was made by virtue of the authority conferred by that statute, and that order states that the Convention is to have "full effect." Article XIV. provides that the Convention is to apply to all works which at the moment of its coming into force have not yet fallen into the public domain *in the country of origin*, and there was no evidence in this case that either the right of translation or of representation had fallen into the public domain *in France* in 1886. No doubt, if section 6 plainly requires the restrictive meaning that the Court of Appeal placed upon it, this meaning must prevail over the Convention, but it is submitted there is no necessity for such a construction. Did the plaintiff fail in his action, it may be asked, because he had the misfortune, by reason of the copyright treaty with France, to have had at one time in England the right to prevent such a translation as he complained of, or would his action have been equally dismissed if he never had had any such right before 1886? For instance, as England had not a copyright treaty with Switzerland before the Berne Convention, any one might, until 1886, have pirated in England a Swiss book whether protected or not in Switzerland; yet it surely cannot be contended that any one may still pirate a Swiss book published before 1886, even though it has not fallen into the public domain in that country? But, if so, then the Act of 1886 has operated to take away from the public a right they possessed before 1886, and Lord Justice Kay's

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objection falls to the ground. On the whole, therefore, we cannot but regard *Lauri* v. *Renad* as wrongly decided, and consider that, according to the true construction of section 6, the determining factor is not whether a work has fallen into the public domain *in England* at the date when the Convention comes into operation, but whether it is still entitled to protection *in the country of origin*. If it be still entitled to protection in the country of origin then the effect of the section, it is thought, is that the foreign author may prevent piracies in the United Kingdom made after the coming into operation of the Convention, but without prejudice to any rights or interests which are subsisting and valuable at that date.

Section 6 is retrospective.

This view is strengthened by the decision of Mr. Justice Charles in *Hanfstaengl Art Co.* v. *Holloway* (*a*)—a case already referred to on another point (*b*). There the learned judge held that section 6 was retrospective and afforded protection to the proprietor of the copyright in a picture made in Germany in 1884. He regarded that section as co-extensive with Article XIV. of the Berne Convention, and thought it might properly be applied in accordance with the introductory words of the Convention, for the effectual protection of authors generally, as well of foreign authors whose works were published or made when the Act was passed, as of foreign authors who thereafter should publish or make works abroad (*c*).

Saving as to existing rights.

The proviso to section 6, which enacts that where works have, before the publication of an Order in Council, been "lawfully produced in the United Kingdom" (*d*), nothing in that section is to diminish or prejudice "any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date," is important, and was fully considered in the case of *Moul* v. *Groenings* (*e*).

The plaintiff, a French subject, had composed and first produced in France a musical composition called the 'Caprice Polka' before the order of the 28th November, 1887, had come into operation, but had not acquired the copyright or sole right of performance in England, pursuant to 7 & 8 Vict. c. 12, and the Order in Council made under that Act, 16th January, 1852. Before the date of the publication of the order of 1887, an English publisher had printed and published the plaintiff's work in

(*a*) (1893), 2 Q. B. 1. (*b*) *Ante*, p. 479.
(*c*) See also per Grantham, J., in *Moul* v. *Groenings* (1891), 2 Q. B. 443, at p. 451.
(*d*) The proviso, therefore, does not protect works lawfully produced in a foreign country before the Convention came into force.
(*e*) (1891) 2 Q. B. 443; 7 Times L. R. 623; 64 L. T. 329; 65 L. T. 327.

England, and the defendant, a bandmaster, had purchased a copy for 5s. for the use of his band, and had played it by his band both before and after such date. In an action for damages for the infringement of copyright and for an injunction, it was held by the Court of Appeal, affirming the judgments of A. L. Smith and Grantham, J.J., that there was evidence to warrant the finding that the defendant had an interest arising from or in connection with the lawful production of the work in the United Kingdom which was subsisting and valuable when the Order in Council was published, and that he was, therefore, protected by the proviso to sect. 6.

In his judgment in the Divisional Court below, Mr. Justice Smith says: "It appears to me that the legislature contemplates a distinction between the word 'rights' and the word 'interests' used in the disjunctive as they are, and to understand what is meant thereby, it becomes important to remember the positions of many authors and publishers in this country when the International Copyright Act was passed in 1886. By the International Copyright Act, 1844 (*a*), to entitle a foreign author to the copyright of a foreign work in this country, it must have been registered within a time to be prescribed by each Order in Council. In 1886, there existed many foreign works copyright in their own country, which had no protection here, and in connection with such works, English authors and publishers were in the habit of bringing out reproductions with such additions and alterations as to give them a protection under the English Copyright Acts. In these cases the English translator or adapter beside his right (in the popular sense) to produce in common with all mankind, a work not copyright in England, had a right in the strict legal sense of the term under the English Copyright Acts, having obtained for his translation or adaptation protection thereunder. It is true he could not prevent other persons going to the foreign original for a similar purpose, but he could prevent them from saving themselves the trouble of translating or adapting by copying his work without going to the original. It is to this class of case, in my judgment, that the term 'rights arising from or in connection with publication' applies, but it is not suggested that Lafleur (the publisher of the English version) had any such rights.

"There also existed another class of case in which English publishers had bestowed no original labour on the foreign

(*a*) 7 & 8 Vict. c. 12, s. 6.

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works they produced here, but had simply reproduced them as Lafleur had produced the polka in the present instance. In this class of case, in my judgment, the English publishers would not have acquired rights within the meaning of the proviso. It is true that they would have, popularly speaking, a right to reproduce the works as had every one else, for no one could stop them; but though they had this right to produce, they could not in my judgment in the terms of the proviso, have any 'rights arising from or in connection with their production.' They had no further right on the day after they had produced the works than they had the day before, and I arrive at the conclusion that in this case neither Lafleur nor the defendant had any rights arising from or in connection with their publication, or performance of the polka within the true reading of the proviso.

"But had not Lafleur *an interest* arising from or in connection therewith? If the publisher of a work had invested capital in its production, and depended for the return of that capital upon the sale of copies in stock, or it may be upon the proceeds of a second edition, and was in such a position upon December 2, 1887, why, I ask, has he not an 'interest arising from or in connection with the production of the work subsisting and valuable' upon December 2, 1887? In my judgment he has, and that it was to meet cases such as these, that the word 'interests' was inserted in the proviso in contradistinction to the word 'rights.' He has a direct subsisting pecuniary interest in the continuation of the production or, in other words, in connection with the production; and s. 6 enacts that this interest is not to be diminished or prejudiced, which a foreigner could distinctly do if he could in such a case, by means of the Act of 1886, stop the further production of the work. This instance of a publisher by no means exhausts the examples which might be given as to whom the proviso would apply, but it suffices to accentuate the points now in hand. I hold, therefore, that Lafleur would have an interest within the true reading of the proviso assuming that he was in the position suggested on December 2, 1887. Now comes the question as to the defendant. Why had not he, on December 2, 1887, an 'interest arising from or in connection with the performance' of the polka then subsisting and of value? For the reasons above given he had no 'rights' within the proviso; but why not an '*interest*'? The learned county court judge held that there was evidence that he had an interest subsisting and of value. In my judgment there was

evidence that he had an interest then subsisting, viz., an interest to recoup and to obtain a return for the outlay he had been put to in purchasing the piece, in training his band in its performance, and possibly in adapting it to different parts for his men, and that this interest was of value. Whether there be such an interest of value must in each case depend upon the facts of each case.

"There is also another point, which is this: if all the bandsmen in the kingdom and all others are to be prevented from playing this polka, it might well be that Lafleur's interest in his unsold copies, if such there be, would be seriously affected, and it seems to me that this would also prevent this action from succeeding, if it were proved that Lafluer was in such a position on December 2, 1887." In the same case Mr. Justice Grantham gave some apt illustrations which clearly show the view the courts are likely to take on the subject. He says: "Just let us assume that it is a book which is the subject of dispute; an English printer has published a French book here, and has a number of copies still unsold. Are those copies to be wasted or not? In my judgment, not, and he would have the right of selling, and others would have the right of buying them certainly until that edition was sold out. As far as his position is concerned, he occupies very much the same position *pro tanto* at least that he would occupy if he had printed and published a book written by an English author, before that author had taken steps to secure his copyright. His interests, to say nothing of his rights in connection with or arising from the publication, would be subsisting and valuable. Next let us take the case of a manager of a theatre. He translates and produces on the stage a French comedy before the passing of the Act. Can it be said that he ought or was likely to be prejudiced by *ex post facto* legislation, and that, though perhaps only one or two performances had been given and none of the initial expenses of reproduction recouped to him, yet he had no interests arising out of that production which were subsisting and valuable at the date of the coming into operation of the Order in Council giving the foreigner this new right? Next take the case of a composer or publisher of music who incurs considerable expense in printing some musical compositions for a band, and has only sold a few copies, and is dependent on the performance of the music by those who have already bought it to popularise the music, and so sell the remainder of his edition. He was completely within his legal rights in the publication here of the music. Has he no interests

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in that publication which would be legal as against an English composer who had delayed the claim of and thus lost his copy right? And if he has as against him this right, he should have the same right as against the foreigner who for the first time was being treated in the same position as the home producer. If the publisher has this right, why then has not the performor of the music the same right apparently reserved to him in the same spirit by this proviso? He might have spent days in teaching his band this music. He might have spent pounds where in this case shillings were spent in the purchase of the music, and he intended probably, as in this case, to continue the performance to recoup himself for his outlay, and to enjoy the valuable interests he had in this music from its great popularity. Would it not be right to preserve his vested interests as well as those of the publisher of the book first mentioned, or the theatrical manager who prepared a French play for the English stage? For these reasons my judgment must be for the defendant, the respondent."

Foreign pictures as trade marks and advertisements.

This case was followed by Mr. Justice Chitty in *Schauer* v. *Field* (*a*). The plaintiff, a German, claimed to have the photographic copyright in an oil painting called 'Lisette,' produced in Germany before December 1885, and also the copyright in a photograph of 'Lisette' as a distinct work of art. In January 1887, some months before the Order in Council extending the benefit of the International Copyright Act, 1886, to Germany came into operation, the defendants registered as their trade mark for candles, a photograph of 'Lisette' on a small scale, with their name and the words "trade mark" across the picture. This trade mark was extensively used by the defendants on their goods; it was also reproduced by them in various sizes and colours by chromolithography on show cards and trade lists for the purposes of advertisements. It was held that the defendants, as the proprietors of the trade mark had an interest in advertising it, as they had done, by means of the show cards and trade lists; that this was an interest arising from or in connection with the trade mark itself, which was subsisting and valuable at the date of the publication of the Order in Council, and that the defendants were consequently protected by section 6 of the Act, and that it was not material to consider the date at which these show cards were produced; neither was it material that there was a trifling difference between the show cards and the trade mark.

(*a*) (1893), 1 Ch. 35.

so long as the substance of the trade mark had been honestly advertised.

This case must be distinguished from *Hanfstaengl Art Co.* v. *Holloway* (*a*), where a German picture had been used for the purpose of advertising the defendant's well-known pills, but not as a trade mark. It would appear—though it is not distinctly stated in the report—that all copies printed before the Order in Council came into operation had been exhausted and that the plaintiff's complaint was in respect of those subsequently printed. Mr. Justice Charles held that the defendant had not such a "direct subsisting pecuniary interest" in the continuation of the advertisement as to bring his case within the proviso to section 6, and he granted an injunction and damages to the plaintiffs.

It would seem to follow from these cases that if a person has lawfully produced in the United Kingdom before December 1887, say, a French work, he will be entitled to sell after that date all copies made before that date, but he will not have a right to bring out a fresh edition or to create fresh copies after that date.

As to the words "lawfully produced," these, apparently, mean produced without any one having had a right in the United Kingdom to prevent the production as being an infringement of copyright (*b*).

Evidence of foreign copyright.

The 7th section of the Act of 1886 provides that where it is necessary to prove the existence or proprietorship of the copyright in any work first produced in a foreign country to which an Order in Council applies, an extract from a register or a certificate or other document stating the existence of the copyright, or the person who is the proprietor or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal or the signature of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature, and shall admit in evidence without proof the documents authenticated by it.

The 11th Article of the Berne Convention is as follows: In order that the authors of works protected by the present Convention shall in the absence of proof to the contrary be

(*a*) (1893), 2 Q. B. 1.
(*b*) Cf. *Pitt Pitts* v. *George* (1896), 2 Ch. 866.

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considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner. For anonymous or pseudonymous works the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author. It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

Treaty with Austria.

Great Britain has a special copyright treaty with Austria, which differs in some respects from the Berne Convention. This treaty came into force on 11th May, 1894 (Order in Council, 30th April, 1894), and applies to all the colonies and foreign possessions of the Crown except Canada, the Cape, and New South Wales (*a*). Under this treaty authors of literary or artistic works, which have been first published in the dominions of one of the contracting parties, are to have in the dominions of the other contracting party the same legal remedy against all infringements of their rights as if the work had been first published in the country where the infringement may have taken place, but these advantages are only to be reciprocally guaranteed to authors when the work in question is also protected by the laws of the state where the work was first published, and the duration of protection in the other country is not to exceed that which is guaranteed to authors in the country where the work was first published (*b*).

This treaty must be construed along with the International Copyright Acts and the Order in Council of 30th April, 1894, made thereunder.

Convention of Montevideo and Pan-American Convention.

Besides the Berne Convention there are two other Conventions at the present day for the protection of international copyright, viz., the Convention of Montevideo (11th January, 1889) and Pan-American Convention (27th January, 1902). To neither of these is Great Britain a party (*c*). The former Convention

(*a*) Newfoundland, Natal, Victoria, Queensland, South Australia, Western Australia, and New Zealand became entitled to the benefit of this treaty on 2nd Feb. 1895, and India on 11th May, 1895.

(*b*) See full text of this treaty and the subsequent Order in Council of 30th April, 1894, in Appendix.

(*c*) The parties to the Convention of Montevideo are the Argentine Republic (19th Dec. 1894), Paraguay (3rd Sept. 1889), Peru (25th Oct. 1889), Uruguay (1st Oct. 1892), and Bolivia (5th Nov. 1903). Brazil and Chili have signed, but not

adopts a wholly different principle to that of the Berne Convention, conferring upon an author belonging to one country of the Union in the other countries of the Union the rights which he enjoys in the country where he first publishes, not the rights which authors enjoy in the country where the infringement takes place, so that under this Convention the law of the country of origin follows the work into the other countries of the Union (*a*). The Pan-American Convention adopts the Berne principle, but in order to obtain the recognition of the copyright of a work it is indispensable that the author shall address a petition to the official department to be designated by each government, claiming the recognition of such right, which petition must be accompanied by two copies of the work, which are to remain in the proper department. If the author desire that his copyright shall be recognized in any other of the signatory countries, he must attach to his petition a number of copies of his work, equal to that of the countries he designates in his petition, to be forwarded to those countries by the department (*b*).

International copyright with the United States.

There is no treaty between Great Britain and the United States on the subject of copyright, and until recently British authors could not prevent their works being pirated in America. Some measure of protection is, however, now accorded to British authors by virtue of the Act known as the Chace Act, 1891. The benefits of this Act are extended to a citizen of a foreign state when such foreign state permits to Americans the "benefit of copyright on substantially the same basis as its own citizens," or when such foreign state is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may at its pleasure become a party thereto. The existence of either of these conditions is to be determined by the President by proclamation.

The rights of foreign authors in the United States under the Chace Act will be fully treated in the part of this work dealing

ratified the Convention. France adhered to the Convention on 3rd July, 1897, Spain on 29th Dec. 1899, Italy 18th April, 1900, and Belgium in 1903. The adhesion of these European countries has been accepted only by the Argentine Republic and Uruguay. The Pan-American Convention was signed by the representatives of seventeen American States, viz., Argentine Republic, Bolivia, Chili, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Salvador, United States, and Uruguay. It has, so far, been ratified only by Guatemala, Salvador, Costa Rica, and Paraguay.

(*a*) As only two of the five countries that have ratified this Convention, viz., Peru and Bolivia, have a precise law on the subject of copyright, the application of the principle seems a little difficult.

(*b*) The provisions of these Conventions are more fully set out in the part relating to Copyright in Foreign Countries.

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with Copyright in Foreign Countries, but it must be remembered that the rights of American authors in Great Britain and her possessions do not rest upon any treaty, but simply upon the ordinary copyright law in Great Britain. In the year 1891 an official assurance was given by the British Government, acting on the opinion of the law officers of the Crown, to the President of the United States, to the effect that under the existing English legislature a foreigner can obtain copyright upon first publication of his work in any part of the British possessions, and that simultaneous publication in a foreign country does not prevent the author from acquiring British copyright. Residence, it was stated, in some part of the British possessions is not a necessary condition to obtaining the protection of the English laws concerning copyright.

We have in an earlier part of this work considered how far this opinion truly represents the English law as to literary copyright (*a*). As to copyright in paintings, drawings, and photographs it seems undoubtedly erroneous, for section 1 of the Fine Arts Copyright Act, 1862 (*b*), expressly confines copyright in those productions to an author who is "a British subject or resident within the dominions of the Crown." Yet upon the faith of the above official assurance, the President of the United States proclaimed Great Britain as entitled to the benefits of the Chace Act (*c*).

But, in any case, an American author will only be entitled to copyright in Great Britain upon complying with the same conditions as a British subject. He must, therefore, publish simultaneously in Great Britain or her possessions on the one hand and in the United States on the other hand, and he must register at Stationers' Hall and deposit the necessary copies of his work where this would be required from a British author.

(*a*) *Ante* p. 91 *et seq.*
(*b*) 25 & 26 Vict. c. 68.
(*c*) And see under "Canada," *post*.

CHAPTER II.

COLONIAL COPYRIGHT.

Colonial copyright.

THE rights enjoyed in the United Kingdom by authors of works first published in the colonies and those enjoyed in the colonies by authors of works first published in the United Kingdom differ materially, the former being governed by Imperial legislation, the latter partly by Imperial legislation and partly by colonial.

As to Literary Copyright the Act of 5 & 6 Vict. c. 45, expressly extends copyright to every part of the British dominions (*a*), but none of the Acts relating to artistic or dramatic copyright contain any similar provision. On the other hand, the Literary Copyright Act did not confer copyright in the United Kingdom on works first published in the colonies (*b*). The Fine Arts Copyright Act, 1862, does refer to the British dominions, giving copyright in all works made in the British dominions or elsewhere (*c*), but it has been held that there is nothing to extend the copyright throughout the British dominions, the provisions of sections 8 and 10, providing for the recovery of the penalties in England, Scotland, and Ireland, and forbidding the importation into the United Kingdom of copies made in any part of the British dominions indicating a contrary intention (*d*).

Whilst, therefore, a British author publishing a literary work in the United Kingdom obtains under the Literary Copyright Act, 1842, an imperial copyright, extending throughout the British dominions (*e*) and is thus enabled to prevent piracies in any colony, a British artist first publishing in the United Kingdom obtains no imperial copyright, but, if he desires to prevent infringements in a colony, must

(*a*) Sect. 29.
(*b*) This is now remedied by the International Copyright Act, 1886, see *post*.
(*c*) Sect. 1. (*d*) *Graves & Co.* v. *Gorrie* (1903), A. C. 496.
(*e*) The "British dominions" means "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired."

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acquire local copyright according to the laws of the particular colony.

Foreign reprints forbidden to be imported into Colonies.

By section 17 of the Literary Copyright Act all persons other than the proprietor of the copyright or persons authorised by him are forbidden to import into any part of the British dominions, for sale or hire, any printed book first composed or written or printed and published within the United Kingdom, wherein there shall be copyright, and reprinted in any country or place out of the British dominions, under penalty of £10, and double the value of the books (*a*). Complaints arose, especially from Canada, with regard to this prohibition. It was contended that in the sparsely populated colonies, where the circulating library system did not prevail, the price of English books was practically prohibitive, whilst English publishers feared to issue special cheap colonial editions, because they would not be able to prevent their re-importation into Great Britain. With a view to remedy these grievances, in 1847 there was passed an Act, which is still in force, commonly known as the Foreign Reprints Act (*b*), enabling the Crown by Order in Council to suspend the prohibition against importation into the colonies of English copyright works, under certain conditions.

The Act provides that in case the legislative authorities in any British possession shall be disposed to make provision for securing or protecting the rights of British authors in such possession, and shall pass an Act or make an Ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to the Crown, and in case the Crown should be of opinion that such Act or Ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for the Crown, if it think fit so to do, to express its royal approval of such Act or Ordinance, and thereupon to issue an Order in Council declaring that so long as the provisions of such Act or Ordinance continue in force within such colony, the prohibitions contained in the aforesaid Acts (*i.e.*, the Copyright Act, 1842, and 8 & 9 Vict. c. 93) (*c*), and therein before recited, and any prohibitions contained in the said Acts, or in any other Acts, against the

(*a*) And see Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), sects. 151 and 152, as to any colony not making entire provision for the management and regulation of their own customs. *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184, *ante*, p. 197.

(*b*) 10 & 11 Vict. c. 95. This Act may, by the Short Titles Act, 1892, be cited as the Colonial Copyright Act, 1847.

(*c*) Since repealed, and now replaced by the 39 & 40 Vict. c. 36.

importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise directed by such Order in Council. Every such Order in Council to be published in the 'London Gazette,' and Orders in Council and the colonial Acts or Ordinances to be laid before Parliament within a certain specified time. Accordingly, the following colonies have placed themselves within the provisions of this Act, viz., Antigua, 25th June, 1850 (*a*); Bahamas, 5th June, 1849; Barbadoes, 29th December, 1848; Bermuda, 2nd March, 1849; British Guiana, 4th November, 1851; Canada, 24th December, 1850, and 8th July, 1868 (*b*); the Cape, 16th March, 1855; Grenada, 13th January, 1854; Jamaica, 13th January, 1854; Mauritius, 15th April, 1853; Natal, 22nd May, 1857; New Brunswick, 8th September, 1848; Newfoundland, 7th August, 1849; Nova Scotia, 8th September, 1848; Prince Edward's Island, 3rd November, 1848; St. Christopher, 20th November, 1849; St. Lucia, 19th November, 1850; St. Vincent, 27th August, 1852; and Trinidad, 1875. In fact, all the important colonies with the exception of Australia. The understood arrangement is, that English publishers shall furnish catalogues of their copyrights to the custom-house authorities in the different colonies, as a guide for exacting what is termed the protective duties. These measures are next to inoperative, and the whole thing is little better than a delusion; so little is collected, that British authors and publishers reap either nothing or some paltry and insignificant amount, and they have now (*c*) generally ceased to give themselves any concern in the matter. In Canada the evil was experienced to a greater extent than in other colonies. Its proximity to the United States need only be recalled to mind to suggest the quarter from which the unauthorized reproductions of British works chiefly proceeded. In short, unauthorized cheap reprints of British copyright

(*a*) The dates are the dates of the 'London Gazette,' containing the respective orders. The orders themselves are dated a few days earlier.

(*b*) These Orders in Council seem no longer to be in force as to Canada. See *post*.

(*c*) A ludicrous but significant illustration of the value of colonial copyright to English authors is furnished in a document sent in 1875 to Archbishop Trench from Her Majesty's Treasury. It announced that the sum of elevenpence was in the hands of the Paymaster-General, and would be paid to Dr. Trench on presentation of a signed receipt. It appears that the elevenpence represented the whole amount the colonial authorities in Canada had levied on the Archbishop's behalf during nearly as many years, that is, at the rate of a penny a year. Yet it is well known that Dr. Trench's books had there a large and constant sale.

works may be said to have been freely imported into and sold in Canada and the adjacent provinces.

These statements are confirmed by a letter dated the 11th of June, 1868, from Mr. John Lovell (a Montreal publisher) to Mr. Rose, which appears in the correspondence carried on between the Canadian Government and the Imperial authorities upon the subject of "Copyright Law in Canada," and published some years ago. Mr. Lovell says: "At present only a few hundred copies pay duty, but many thousands pass into the country without registration, and pay nothing at all; thus having the effect of seriously injuring the publishers of Great Britain, to the consequent advantage of the United States. I may add that, on looking over the custom-house entries to-day, I have found that not a single entry of an American reprint of an English copyright (except the reviews and one or two magazines) has been made since the 3rd day of April last, though it is notorious that an edition of 1000 of a popular work coming under this description has been received and sold within the last few days by one bookseller in this city."

The Copyright Commissioners on the Colonial Copyright Act, 1847.

The Royal Copyright Commissioners in their report in June, 1878, referring to the operation of the Colonial Copyright Act, 1847, say, "so far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada; but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the ten years ending in 1876, the amount received from the whole of the nineteen colonies, which have taken advantage of the Act, was only £1155 13*s.* 2½*d.*, of which £1084 13*s.* 3½*d.* was received from Canada; and that, of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings" (*a*).

Customs Consolidation Act.

Section 152 of the Customs Consolidation Act (*b*) prohibits the importation into the British possessions abroad of British copyright books printed or reprinted in any other country, provided the proper notices be given to the customs authorities; but this section is limited by section 151 of the same Act, which, whilst declaring that the Customs Acts are to extend and be of full force and effect in the several British possessions abroad, excepts

(*a*) See 39 & 40 Vict. c. 36, s. 42, and 52 & 53 Vict. c. 42; from 1877 to 1895 the sum of £5278 was collected in Canada.

(*b*) 39 & 40 Vict. c. 36.

any possession which "shall by local Act or ordinance have provided, or may hereafter with the sanction and approbation of Her Majesty and her successors, make entire provision for the management and regulation of the customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act for the purposes of such provision." Canada, for instance, does make such provision, and the Act, therefore, does not apply in that colony (*a*).

Suggestions of Copyright Commissioners as to colonial copyright.

The suggestions of the Royal Copyright Commissioners on the subject of colonial copyright were numerous. They recommended that the difficulty of securing a supply of English literature at cheap prices for colonial readers should be met in two ways: first, by the introduction of a licensing system in the colonies; and, secondly, by continuing, though with alterations, the provisions of the Colonial Copyright Act, 1847.

In proposing the introduction of a licensing system, they did not intend to interfere with the power now possessed by the colonial legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. They recommended that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a licence might, upon an application, be granted to republish the work in the colony, subject to a royalty in favour of the copyright owner, of not less than a specified sum per cent on the retail price, as might be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law (*b*).

Not recommend repeal of the Colonial Copyright Act, 1847.

The Commissioners could not recommend the simple repeal of the Colonial Copyright Act, 1847. They believed that although the system of republication under a licence might be well adapted to some of the larger colonies which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter at present depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Colonial Copyright Act, 1847, without estab-

(*a*) *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.
(*b*) Par. 207.

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lishing some other system of supply would be to deprive them in a great measure of English books (*a*). The Commissioners considered that it had been proved that the existing law in the different colonies had failed to secure remuneration to proprietors of copyright, and therefore they suggested that power should be given to the Crown to repeal the existing Orders in Council, and that no future Order in Council should be made under the Act until sufficient provision had been made by local law for better securing the payment of the duty upon reprints to the owners of copyright works (*b*).

It appeared to the Commissioners that possibly some arrangement might be effected by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with the date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped, they thought should be liable to seizure, and possibly some penalty might be also affixed to the dealing with unstamped copies.

And having regard to the power which they had contemplated, for authors to obtain colonial copyright by republication in the colonies, and to the licensing system which they had suggested, they recommended that when an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any.
2. Where an adequate provision, as pointed out above, has been made; or,
3. After there has been a republication under the licensing system (*c*).

And, lastly, the Commissioners were of opinion that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owner; and conversely, that reprints in the United Kingdom of copyright works first published in any colony, should not be admitted into such colony without the consent of the copyright owners (*d*).

Colonies now have copyright in the United Kingdom.

In the case of *Routledge* v. *Low* (*e*), Lords Cairns, Cranworth, Chelmsford, Westbury, and Colonsay unanimously held that to

(*a*) Par. 211.
(*b*) Par. 213.
(*c*) Pars. 215, 216.
(*d*) Pars. 225, 226.
(*e*) (1868), L. R. 3 H. L. 100.

acquire a copyright under 5 & 6 Vict. c. 45, the work must be first published in the United Kingdom. The law, therefore, was that if a literary or musical work were first published in the United Kingdom, it would be protected from infringement in any part of the British dominions; but if, on the other hand, any such work were first published in India, Canada, Jamaica, or any other British possession not included in the United Kingdom, no copyright could be acquired in that work, excepting only such (if any) as the local laws of the colony, &c., where it is first published might afford.

This opinion caused great and general dissatisfaction in the colonies and India; it either destroyed all copyright property in the numerous works since 1842, which had been first published there, or rendered such property comparatively worthless; and this hardship was increased by the fact that, since 1842, it had been, and still is, compulsory upon all publishers in the British dominions, gratuitously to send one copy of every book published by them to the British Museum, and on application four to the libraries of Oxford, Cambridge, &c.

This grievance is now removed by the International Copyright Act, 1886, which, by section 8, provides that the Copyright Acts (*a*) shall, subject to the provisions of the Act of 1886, apply to a literary or artistic work first produced in a *British possession* in like manner as they apply to a work first produced in the United Kingdom: provided (a) that the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and (b) that where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required. If, therefore, in the particular colony there is no provision for registration, then the registration must be effected in this country.

It follows, therefore, that a book produced in the colonies obtains at once the same copyright throughout the British dominions that it would have enjoyed if first produced in the United Kingdom (*b*). But it has been held that the author of

(*a*) *i.e.*, The Engraving Copyright Acts, 1734 and 1766; The Copyright Act, 1775; The Prints Copyright Act, 1777; The Sculpture Copyright Act, 1814; The Dramatic Copyright Act, 1833; The Lectures Copyright Act, 1835; The Prints and Engravings Copyright Act, 1836; The Copyright Act, 1836; The Copyright Act, 1842; The Colonial Copyright Act, 1847; and the Fine Arts Copyright Act, 1862.

(*b*) Section 8 of the International Copyright Act, 1886, provides that nothing in the Copyright Acts, or that Act shall prevent the passing in a British possession of any Act or Ordinance respecting the copyright within the limits of such possession of works first produced in that possession. No local Act can, however, limit the imperial copyright conferred by the Act of 1842. It will be noticed that there is nothing to restrict the term of copyright to the term which the author enjoys according to the local laws of his colony.

a work of art published in the United Kingdom does not, under the 25 & 26 Vict. c. 68, obtain copyright in any part of the British dominions outside the United Kingdom, although it is provided by section 9 of the Act of 1886 "that this Act shall apply to every British possession as if it were part of the United Kingdom" (*a*). Apparently, therefore, a work of art produced in, say, Canada enjoys copyright in the United Kingdom, and in the countries of the Copyright Union, but not in Australia, India, and other British possessions.

Evidence of Colonial copyright.

It is further provided by section 8 of the Act of 1886 that where a register of copyright in books is kept under the authority of a Government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal, or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the Government of a British possession, shall be admissible in evidence of the contents of the register.

It would appear from the terms of this provision that it would only apply to the registration of works other than books, if their registration were contained in a register of books.

Where, before the passing of the Act of 1886, an Act or Ordinance has been passed in any British possession respecting copyright in any literary or artistic works, an Order in Council may be made modifying the Copyright Acts and the Act of 1886, so far as they apply to such British possession and to literary and artistic works produced therein (*b*). It is also provided that fresh colonial legislation may be passed and hold good within the limits of the colony passing it (*c*).

Law previous to the International Copyright Act, 1886.

Previous to the International Copyright Act, 1886, and the Berne Convention, a foreign author registering in London a book first published in a federated country, and also delivering in London a copy in the prescribed manner, became entitled to sue in respect of any infringement taking place in the British possessions. It is clear that as all the provisions as to registration and deposit under the former Acts referred to the United Kingdom, no colonial registration or preliminary formalities in reference to the colonies were necessary.

Position of colonies under Berne Convention.

It will be well briefly to consider the position of the colonies under the International Copyright Acts and the Berne Convention.

(*a*) *Graves & Co.* v. *Gorrie* (1903), A. C. 496.
(*b*) Sect. 8. (*c*) *Ib.*

There are two sections of the Act of 1886 which deal with the question, the 9th and 10th.

The former provides that where it shall appear to the Crown expedient that an Order in Council under the International Copyright Acts made after the passing of this Act (*a*), as respects any foreign country shall not apply to any British possession, it shall be lawful for the Crown by the same or any other Order in Council to declare that such Order and the International Copyright Acts and the Act of 1886, shall not, and the same shall not apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such order; and the expressions in the said Acts relating to the dominions of the Crown shall be construed accordingly; but save as provided by such declaration the said Acts and the Act of 1886 shall apply to every British possession *as if it were part of the United Kingdom*.

"British possessions."

The expression "British possession" is defined to mean and "include any part of Her Majesty's dominions exclusive of the United Kingdom"; and where parts of such dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of the definition to be deemed to be one British possession (*b*).

The 19th Article of the Berne Convention provides that the federated countries shall have the right to introduce into the Convention their colonies or foreign possessions. They may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded. By the *procès verbal de signature*, France declared the accession of all the French colonies, and Great Britain, under this article declared that her accession to the Convention for the protection of literary and artistic works, was for the United Kingdom of Great Britain and Ireland and all the colonies and foreign possessions of Her Britannic Majesty (*c*). At the same time this country reserved the power of announcing at any time the separate denunciation of the Convention (*d*), by one or several of the foreign colonies or

(*a*) The Act of 1886. (*b*) Sect. 11.

(*c*) Great Britain also ratified the Additional Act of Paris "on behalf of the United Kingdom, as well as of all the British colonies and possessions."

(*d*) If any colony were to requirethe mother country to denounce the Convention so far as that colony were concerned, the Crown would seem to have power under section 9 of the International Copyright Act, 1886, to deprive that colony of the benefits of section 8 of the same Act, under which colonial works acquire copyright in Great Britain; so far, however, the only colony that has shown any disposition to retire from the Union has been Canada.

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possessions in the manner provided by Article 20 of the Convention, namely:—India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

Rights of foreigners in British colonies.

The rights of foreigners in the British colonies depend upon the International Copyright Acts, the Orders in Council made thereunder, and the Berne Convention with the Additional Act of Paris. The Order in Council of 28th November, 1887, provides that the author of a literary or artistic work produced in one of the foreign countries of the Copyright Union shall have as respects that work "throughout Her Majesty's dominions the same right of copyright . . . . if the work had been first produced in the United Kingdom, and shall have such right during the same period" (*a*). According to this provision a foreigner belonging to one of the countries of the Copyright Union obtains in the British colonies not the protection accorded by the local laws of the particular colony but the protection which an author would obtain in the colonies who published in the United Kingdom. He therefore obtains copyright under the Act of 1842 for books throughout the British possessions, but it is more doubtful whether he obtains copyright in a work of art. As we have seen, it has been held that a picture published in Great Britain does not obtain colonial copyright (*b*), but it is conceived that a foreign artist may perhaps be placed in a more favourable position than the British, by reason of the closing words of section 9 of the Act of 1886, which enact that "the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom." As an artist publishing in the United Kingdom would clearly have copyright in his picture there, it might possibly be contended that these words operate to extend the foreigner's rights, though, according to the decision above referred to, they do not so operate with regard to a British artist's rights.

Rights of colonials in countries of Copyright Union.

The rights of colonial subjects in the foreign countries of the Copyright Union do not depend upon the International Copyright Acts and the Orders in Council thereunder, so the peculiar wording of those provisions need not be considered. These rights depend simply upon the Berne Convention and the legislation conferring copyright in the particular foreign

(*a*) Clause 3. Clause 3 of the Order in Council of 30th April, 1894, putting the treaty with Austria into effect is similarly worded.
(*b*) *Graves & Co.* v. *Gorrie* (1903), A. C. 496.

country. A suggestion has been made (*a*) that the language of Article 19 implies the introduction of the colonies or foreign possessions as part of the mother country and not as distinct countries. It is, however, submitted that the preferable construction is that the various colonies for the purpose of obtaining copyright in foreign countries are to be treated as distinct countries, except that their adherence or denunciation is to be conveyed through the mother country.

The point, no doubt, is of importance, because, for the purpose of Article 2 of the Convention, it has to be determined what is the "country of origin" of a work—is it the mother country or is it the colony? The question is, when that article provides that the formalities necessary to obtain protection are those prescribed by the legislation of the "country of origin of the work," does it mean, in the case of a colony, the formalities required by the legislation of the colony or the mother country of which such colony is a dependency? For instance, if a work be first published in New Zealand, must it be registered at Stationers' Hall in order to obtain copyright under the Berne Convention. It is submitted that the colonial copyright that is protected in these foreign countries is the copyright conferred by section 8 of the Act of 1886, and, consequently, that if the colony provides for registration that will be sufficient; if not, then registration in England is necessary. Therefore, an author who publishes in a colony which has no copyright legislation will, it is conceived, on registering in England, acquire copyright both in Great Britain and in all the countries belonging to the Copyright Union.

(*a*) Cutler, Smith, and Weatherley on Musical and Dramatic Copyright.

CHAPTER III.

LOCAL COPYRIGHT LAWS OF BRITISH COLONIES AND POSSESSIONS.

AUSTRALASIA.

THE Australian Colonies have all legislation of their own respecting copyright: this legislation is, for the most part, a copy of the English law, but it is inclined to lag behind, and only follows the changes of the English law at a respectful distance of time. All appear to have established registries for copyright, except Tasmania.

NEW SOUTH WALES.

Act of 1879. The Copyright Act, 1879 (42 Vict. No. 20), was passed in 1879 to secure to proprietors of works of literature and fine art, and to proprietors of designs for articles and works of manufacture and art, the copyright of such works and designs for a limited period (*a*). The Act came into force on the 1st of July, 1879.

Definitions. "Book" is defined as in the (Imperial) Copyright Act, 1842, and "dramatic or musical production" as "dramatic piece" in the said Act.

"Engraving" includes every work made upon a plate, block, or slab of any material by engraving, lithography, or any other process, whereby impressions may be taken from such plate, block, or slab.

"Drawing and painting" include every drawing and painting made in any manner and material and by any process.

"Photograph" includes any photograph or other similar work which shall be produced by the action of light or any chemical process.

(*a*) It has been held in New South Wales that the proprietor in Great Britain of the sole right of representing a dramatic work can, under the 3 Will. IV. c. 15 and 5 & 6 Vict. c. 45, assign to another that right in the Australian Colonies, and the assignee can sue in his own name in those colonies to restrain the infringement of his right. *Holt* v. *Woods* (1896), 17 N. S. W. R. 36.

"Work of sculpture" includes any piece of sculpture whether in the round, in relief, or intaglio, made in any material, and by any process.

Copyright means the sole and exclusive right and liberty of making, printing, writing, drawing, painting, photographing, or otherwise howsoever multiplying copies of any matter, thing, or subject to which the said word is herein applied, or to which any original design has been applied.

Proprietor includes the author of books, &c., unless executed on behalf of others for value in which case the latter are to be considered proprietors and entitled to be registered; and also includes assignees or partial assignees of copyright, and persons to whom copyright is bequeathed or on whom it devolves.

Literary, dramatic, and musical copyright.

Part I. of the Act relates to literary, dramatic, and musical works, and is substantially identical with the Imperial Copyright Acts relating to the same subject-matter, *i.e.*, the Copyright Act, 1842, the Dramatic Copyright Act, 1833, and the Lectures Copyright Act, 1835. Ss. 3 to 17 correspond to ss. 3, 5, 6, 7, 10, 11, 13, 15, 16, 17, 18, 19, 22, 23, and 24 of the Copyright Act, 1842, with the following modifications:

The Governor instead of the Privy Council is to license the republication of books on the complaint of the Attorney-General.

Copies of books are to be delivered to the Free Public Library and the University of Sydney; delivery to be made within two months after first sale, publication, or offering for sale in the colony. The penalty for default is a sum not exceeding £10.

A Book of Registry is to be kept at the Registry appointed by the Act.

Piracy in the colony only is restrained: in addition to a right of action against him, the offender is also to be liable to a penalty not exceeding £10 for each offence, to be recovered in a summary manner with full costs.

Importation into the colony is alone restrained.

Registration is a condition precedent of the right to sue in the case of dramatic pieces as well as books, but an exception is made in the case of lectures.

Sects. 18 and 19 are equivalent to ss. 20 and 21 of the Copyright Act, 1842, and ss. 1 and 2 of the Dramatic Copyright Act, 1833.

Sects. 20, 21, 22, 23, and 24 correspond to ss. 1, 2, 3, 4 and 5 of the Lectures Copyright Act, 1835.

The required notice is to be given twice in a newspaper circulating in the locality where a lecture is given.

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NEW SOUTH WALES.

Fine arts copyright.

Part II. relates to the Fine Arts, and with the important exception that a more limited term of duration is given; and that the Act also provides, as to sculptures and engravings throughout, is substantially identical with the Fine Arts Copyright Act, 1862.

Sects. 25 to 33 correspond to ss. 1, 2, 4 to 8, 10, and 11 of the last-named Act, with the following modifications:

Authors must be British subjects, or resident in the colony: fourteen years' protection only is given, which, in the case of photographs, is reduced to three.

Omission to register, it is expressly provided, shall only affect the right to sue. A register of the works to which this part of the Act applies is to be kept at the registry. Recovery of penalties follows the English procedure: jurisdiction is also given where the offender has his place of business.

Importation into the colony only is restrained.

Designs.

Part III. relates to designs, and incorporates 5 & 6 Vict. c. 100, 6 & 7 Vict. c. 67, and 21 & 22 Vict. c. 70.

Sect. 34 is a combination of s. 3 of the 5 & 6 Vict. c. 100, s. 3, and 6 & 7 Vict. c. 67, s. 2.

The designs protected are any new and original designs of any artistic or work of manufacture or art, and whether such article or work be for purposes of utility, ornament, or otherwise, and whether such design be applicable to the ornamentation only of any article or work of manufacture or art, or to the pattern, shape, configuration, or ornamentation of any substance, artificial or natural, or partly artificial and partly natural, and whether such design be applicable to two or more of such purposes, . . . following onwards s. 3 of 5 & 6 Vict. c. 100.

Protection is given in the first five classes for three years, in the remaining nine for two years; the classes agree with those in the English Act, except that class 2 includes articles of stone, cement or plaster; ivory, bone, and papier mâché, and other solid substances not in the previous classes (see 13 & 14 Vict. c. 104, s. 8), are put in a separate class, No. 5.

Class 7 corresponding to class 6 of the English Acts includes tapestry, floor-cloth, and oil-cloth (see 6 & 7 Vict. c. 65, s. 5).

Sect. 35 corresponds to s. 4 of the 5 & 6 Vict. c. 100 and 21 & 22 Vict. c. 70, s. 4.

Sect. 36 corresponds to s. 15 of the 5 & 6 Vict. c. 100 and 21 & 22 Vict. c. 70, s. 5, providing that there must be furnished on registration a model or pattern as well as two copies, &c.

of the design. The model or pattern may be dispensed with by the Attorney-General.

Sects. 37 to 44 correspond with ss. 16, 6, 17, 7, 8, 9, 10, and 11 of the 5 & 6 Vict. c. 100.

The penalty for piracy is not to exceed £50, and if sued for summarily not more than £20. Jurisdiction is also given where the offender has his place of business.

Part IV. of the Act contains miscellaneous provisions:

Sect. 45 corresponds to 5 & 6 Vict. c. 100, s. 19.

Sect. 46 corresponds to 5 & 6 Vict. c. 45, s. 12.

Sect. 47 corresponds to 25 & 26 Vict. c. 68, s. 3.

Sect. 48 corresponds to the last part of 5 & 6 Vict. c. 45, s. 26, relating to the limitation of actions.

Sect. 49 corresponds to 25 & 26 Vict. c. 68, s. 9. It provides that actions for infringement must be brought in the Supreme Court and that injunctions may be granted.

Sect. 50 provides that the registrar may amend entries at the request of the proprietor, and contains a provision similar to that contained in 5 & 6 Vict. c. 45, s. 14.

Sect. 51 corresponds to s. 9 of the 6 & 7 Vict. c. 68.

Sects. 52, 53, and 54 relate to the appointment of registrars, &c., the seal of the registry office, and fees respectively.

Sect. 55 provides that nothing in the Act contained shall be deemed to affect the law of copyright as applicable to the colony by any imperial statute then in force, and also that persons in the colony may copy paintings, &c., in public museums.

Book Act of 1897.

In 1899 the Book Purchasers' Protection Act, 1899 (69 Vict. No. 25), was passed repealing an earlier of 1890. It provides that every contract for the purchase of books, engravings, lithographs, pictures, or other like matter shall be void, where the books or any volumes or numbers thereof are not to be delivered to the purchaser at the date of the contract in a completed form, unless the purchaser has signed an agreement in a special form containing words limiting the liability of the purchaser.

The vendor is at the time of signing the agreement to give a duplicate thereof to the purchaser, and cannot recover unless he produces an acknowledgment by the purchaser of receiving such duplicate.

The court may determine the value of any printed matter in actions on contracts, proof to be on the vendor.

New South Wales is not a party to the British Copyright Treaty with Austria.

NEW ZEALAND.

Copyright in books.

An Act passed in 1842 (5 Vict. No. 18) regulates copyright in books. It provides that the author of any printed and published book shall have the sole right of printing and reprinting it for twenty-eight years from first publication, and if the author is living at the end of that period for the residue of his life (*a*).

Penalty.

Persons printing or importing protected books or knowingly selling the same or having them in their possession, shall be liable to an action in which double costs shall be allowed, and if verdict is given against him, the offender shall forfeit £50 to the Government (*b*).

In 1877, the "Fine Arts Copyright Act, 1877" (41 Vict. No. 17), was passed.

The Act provides for copyright in any original painting, drawing, engraving, useful or ornamental design, sculpture, photograph, and the negative in any photograph: and is with the exception of the introduction of designs, substantially identical with the Fine Arts Copyright Act, 1862.

A register is to be kept at Wellington: in the case of a photograph, a positive photograph upon paper is to be furnished to the registrar.

Any officer omitting or falsely making an entry is to be guilty of misdemeanor.

The penalties for signing or affixing a name, initials, or monogram shall only be incurred if the person whose name, &c., was signed or affixed was living at or within seven years next of the time of offence.

Pecuniary penalties, &c., may be recovered by summary proceeding before a resident magistrate or two justices of the peace, having jurisdiction where the offence was committed or the complainant resides.

Photographs.

The Photographic Copyright Act, 1896 (No. 16), provides that photographs other than portraits or photographs of any subject for taking which valuable consideration has been given, are to be protected in favour of the person or firm taking and producing the same for a period of five years, if the word "protected" with the name of the taker and date of taking are made part of the original plate and clearly appear in each reproduction thereof.

Industrial designs are protected by the "Patents, Designs,

(*a*) See 54 Geo. III. c. 156.
(*b*) Barton's Practical Statutes of New Zealand, vol. ii. p. 1218.

and Trade Marks Act, 1889" (No. 12), as amended by the Amendment Act of 1897 (No. 8), which is substantially identical with the Imperial Patents, Designs, and Trade Marks Act, 1883, as amended.

QUEENSLAND.

Copyright Registration Act, 1887.

The Colonial Act affecting copyright in books and dramatic pieces is "The Copyright Registration Act (Queensland), 1887" (51 Vict. No. 2), the effect of which is shortly given.

After a preamble referring to the International Copyright Act, 1886 (49 & 50 Vict. c. 33), and stating that it was advisable to make provision for the registration of copyright in literary and artistic works in Queensland, and for keeping a register of copyright, it enacts (s. 2) that the Imperial Copyright Acts may be cited as citable in the Short Titles Act, 1892.

The terms "book" and "dramatic piece" are respectively defined as in the Copyright Act, 1842.

Register.

Sect. 3 provides that there is to be kept at Brisbane a register of copyright in books and dramatic pieces published in Queensland, in which shall be recorded the title of the work, the name of the publisher and the place of publication, the name and place of abode of the proprietor of the copyright, and the date of the first publication or first performance in Queensland.

By section 4, the proprietor of copyright in any such work published in Queensland may cause the same to be registered.

He is to deliver a statement giving the particulars previously required, and pay the sum of 5*s*.

In the case of MS. dramatic or musical compositions it is sufficient to register the title, the name and place of abode of the author or composer, the name and place of abode of the proprietor, and the time and place of first performance.

Assignment of copyright.

Under section 5 any registered proprietor may assign his interest by delivering to the registrar a memorandum of such assignment, and of the name and place of abode of the assignee, attested by a justice. Fee 5*s*.

Such assignment shall be registered, and shall then be effectual in law to all intents and purposes whatsoever without being subject to stamp duty.

By section 6 persons aggrieved by an entry in the register may apply to the Supreme Court, who may order the entry to be varied or expunged.

Deposit of

Sect. 7 enacts that copies of books and of all subsequent

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editions are to be delivered within six months of the day of first sale, publication, or offering for sale, and before the copyright is registered, by the publisher at the Museum and the Parliamentary Library in Brisbane.

copies of books.

Sect. 8 provides as to the mode of delivery.

Penalty for non-delivery.

Sect. 9 enacts that if delivery is not made, the person who would have been entitled to copyright shall not be entitled to any benefit of copyright.

The register is to be open for inspection on payment of 1*s.* for every entry inspected: certified extracts are to be given when required on payment of 5*s.*, and shall be received in evidence and shall be *primâ facie* evidence of the propietorship assignment right of representation or performance.

Making a false entry in the register is a misdemeanor punishable with imprisonment up to three years with or without hard labour.

Fine Arts Registration Act.

The Copyright (Fine Arts) Registration Act, 1892 (56 Vict. No. 6), provides for the registration of paintings, drawings, and photographs, and for the assignment of the copyright in such works, and for the registration of such assignment.

By section 6 persons aggrieved by an entry may apply to the Supreme Court, who may order the entry to be varied or expunged.

Making a false entry is punishable with imprisonment up to three years with or without hard labour.

Under the Copyright Registration Act, 1898 (62 Vict. No. 13), the duties of the Registrar-General under the Copyrights Acts were transferred to the Registrar of Patents, Designs, and Trade Marks.

Designs.

Designs are protected by the "Patents, Designs, and Trade Marks, 1884" (48 Vict. No. 13). This Act is in substance identified with the Imperial Patents, Designs, and Trade Marks Act, 1883.

This Act, so far as it relates to designs, has been amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1890, which incorporates the amendments made by the Imperial Act of 1888 (51 & 52 Vict. c. 50), and also provides for protection of designs exhibited at exhibitions outside the colony of Queensland.

SOUTH AUSTRALIA.

Copyright Act, 1878.

The Copyright Act, 1878 (41 & 42 Vict. No. 95), was passed in 1878 to protect copyright in designs and works of manufac-

ture and art, in works of literature and fine arts for a limited period. It was assented to on the 22nd October, 1878.

The Act is not to affect the law of copyright as applicable to the colony by any imperial statute then in force.

The Act is substantially identical with the Copyright Act of New South Wales with some slight variations and omissions.

The part relating to designs omits the lists of classes and the clause as to cancellation and amendment of registration.

Copies of books are to be sent to the South Australian Institute: the penalty is a sum not exceeding £5.

Proceedings before justices are to be conducted under Ordinance No. 6 of 1850.

In case of non-payment of penalties, &c., the person making default may be committed to prison for three months by any justice of the peace.

An appeal lies from any order of justices of the peace to the Local Court of Adelaide of full jurisdiction only: the proceedings are regulated by Ordinance No. 6 of 1850. The Local Court may on the hearing of an appeal state a case for the opinion of the Supreme Court.

Newspaper telegrams are protected under the Telegram Copyright Act, 1872.

TASMANIA.

Newspaper Copyright Act, 1891.

The only Colonial Act passed in Tasmania on the subject of copyright seems to be "The Newspaper Copyright Act, 1891," which defines newspapers, and provides that persons republishing in a newspaper any portion of a message received by electric telegraph from any place within forty-eight hours of the first publication thereof in the newspaper in which it first appeared without consent, and not having previous copyright in such matters shall for every offence upon conviction on the information to be laid before two justices of the proprietor of the newspaper in which the matter first appeared, forfeit a sum from £20 to £100. Half the penalty goes to the informant.

Designs.

Designs are protected under the Patents, Designs, and Trade Marks Act, 1893 (57 Vict. No. 6), which is substantially in accordance with the Imperial Acts.

VICTORIA.

Previously to 1890 copyright in Victoria was governed by the Copyright Act, 1869, and the Exhibitors' Protection Act, 1872; this legislation was repealed and substantially

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re-enacted by the Copyright Act, 1890, which came into operation on the 1st of August, 1890. It is divided into four parts, and protects designs, literary, dramatic and musical productions, lectures and fine arts.

Copyright Act, 1890.

The Act is substantially identical with the Copyright Act of New South Wales *mutatis mutandis*. Copies of books are to be delivered to the Melbourne Library.

Sect. 56 provides that county courts are to have jurisdiction in cases relating to copyright and the provisions of the County Court Act, 1890, are to apply.

Sect. 58 provides that proprietors of articles protected as designs and fine arts which may be publicly exhibited at any exhibition authorized by the Governor under the Exhibitions Act, 1890, shall during the exhibition be entitled to the benefits of this Act as if such proprietor had complied with the provisions of the Act, and such exhibition shall not be deemed a publication.

WEST AUSTRALIA.

Designs.

Copyright in designs is protected by the "Designs and Trade Marks Act, 1884" (48 Vict. No. 7) (as amended in 1894, 58 Vict. No. 4), which came into operation on the 1st January, 1885.

The Act is, so far as it relates to designs, substantially identical with the Patents, Designs, and Trade Marks Act, 1883 and 1888 (Imperial). The Colonial Secretary is substituted for the Comptroller, and the appeal from him is to the Governor.

The register is to be kept at the Colonial Secretary's office.

By the Act 50 Vict. No. 4, being an Act to alter the law relating to the procedure under the Act of 1884, and an Act regulating patents, it was enacted that a Patent Office should be provided under the control of a registrar, and the powers, duties, &c., of the Colonial Secretary were transferred to the Registrar and the Patent Office was substituted for the Colonial Secretary's office.

Copyright Register Act, 1887.

By the Copyright Register Act, 1887 (51 Vict. No. 3), a copyright register was established, wherein are to be registered the proprietorship in the copyright of books and assignments thereof, and in dramatic and musical pieces whether in MS. or otherwise, and licences affecting such copyright.

The register is to be kept by the Registrar-General at his office, is to be open for inspection on payment of a fee of 1s., the Registrar is to give certified copies of entries on payment

of 5*s.*: such copies are to be received in evidence, and shall be *prima facie* proof of proprietorship, subject to rebuttal, and in case of dramatic or musical pieces, *prima facie* proof of the right of representation or performance.

Making a false entry or tendering in evidence a false copy is a misdemeanor.

There are also provisions corresponding to ss. 13 and 14 of the (Imperial) Copyright Act, 1842. Forms are given in the schedule.

Copyright in literary and artistic works is regulated by the Copyright Act, 1895 (59 Vict. No. 24). It is very similar, *mutatis mutandis*, to the Copyright Act of New South Wales. Copies of books are to be sent to the Victoria Public Library; the penalty in default is a sum not exceeding £5.

Copyright Act, 1895.

Copyright in newspaper telegrams is protected under the Telegraph Copyright Act, 1872.

BRITISH AMERICA.

CANADA.

Unusual interest attaches to the question of copyright in Canada, and this interest seems likely to increase rather than diminish. Her proximity to the United States and the extent of her frontier have peculiarly exposed her to the importation of unauthorised reprints, and the enterprise of United States publishing firms has threatened to strangle the native book-producing industry. For over half a century the copyright laws have been a constant source of friction between Canada and the Mother Country, and the trouble does not appear even yet to have been finally removed.

Canada.

In 1875, the Dominion Parliament passed an Act (*a*) giving copyright for twenty-eight years from the time of recording the copyright as therein directed to any person domiciled in Canada, or in any part of the British dominions, or being the citizen of any country having an international copyright treaty with the United Kingdom (*b*), who is the author of any book, map, chart, or musical composition, or of any original

The Canadian Acts of 1875 and 1886.

(*a*) Now replaced and substantially re-enacted by the revised Statutes of Canada, 1886, c. 62, to be cited as "The Copyright Act."

(*b*) These words cover the case of any country which is a party to the Berne Convention. They also cover Austria, which has a copyright treaty with Great Britain, though Canada is not included in that treaty, but Canada contends that the words do not cover the United States, see *infra*. The Act of 1889 proposed to limit the words by adding "in which Canada is included."

painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched, or made from his own design any print or engraving, and the legal representatives of such person the sole right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific, or artistic works or compositions, in whole or in part, and of allowing translations to be printed or reprinted and sold of such literary works from one language into other languages (*a*).

Term of copyright and in whom vested.

If at the expiration of the term of twenty-eight years, the author or any of the authors (when the work has been originally composed and made by more than one person) be still living, or being dead have left a widow or a child or children living, the same exclusive right is continued to such author, or if dead, then to such widow and child or children, as the case may be, for the further term of fourteen years, provided that within one year after the expiration of the first term the title of the work be again recorded, and all other regulations required to be observed in regard to original copyrights are complied with in respect to such renewed copyright (*b*).

Conditions on which copyright depends.

In order to entitle an author to the benefit of copyright under this Act, the following conditions must be complied with :

1. Such literary, scientific, or artistic works must be printed and published or reprinted or republished in Canada, or in the case of works of art, must be produced or reproduced in Canada, whether so published or produced for the first time or contemporaneously with or subsequently to the publication or production elsewhere (*c*).

2. In the case of a book, map, chart, musical composition, photograph, print, cut, or engraving, two copies must be deposited at the office of the Minister of Agriculture; and so in the case of paintings, drawings, statuary and sculpture, unless a written description of such works is furnished to the Minister of Agriculture (*d*).

3. Information must be given of the copyright being secured, by causing to be inserted in the several copies of every edition on the title-page, or on the page immediately following, if it is a book, or if it is a map, chart, musical composition, print, cut, engraving, or photograph, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, engravings

(*a*) Sect. 4, Act of 1875; sect. 4, Act of 1886.
(*b*) Sect. 5, Act of 1875; sect. 17, Act of 1886.
(*c*) Sect. 4 (2), Act of 1875; sect. 5 (1), Act of 1886. The section places no limit on the time within which republication must be effected.
(*d*) Sect. 7, Act of 1875; sect. 9, Act of 1886.

or photographs upon the title-page or frontispiece thereof, the following words, "Entered according to Act of Parliament of Canada in the year , by A. B., at the Department of Agriculture" (*a*). As regards paintings, drawings, statuary, and sculptures, the signature of the artist is deemed sufficient notice of the proprietorship (*b*).

4. Whenever the author of a literary, scientific, or artistic work or composition which may be the subject of copyright has executed the same for another person, or has sold the same to another person for due consideration, such author will not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege unless a reserve of the said privilege be specially made by the author or artist in a deed duly executed (*c*).

Interim copyright.

Pending the publication or republication in Canada of a literary, scientific, or artistic work, the author may secure interim copyright (*i.e.*, for one month from the date of the original publication elsewhere) by depositing a copy of the title or a designation of the work intended for publication or republication in Canada. The author must publish the registration of this interim copyright in the 'Canada Gazette' (*d*). When interim copyright is secured the work must be published in Canada within one month of its original publication elsewhere under a maximum penalty of 100 dollars (*e*).

Piracy.

Offenders forfeit the plate and every sheet copied, and are liable to a penalty varying from ten cents to a dollar for every sheet—half to the proprietor and half to the Crown.

Assignment.

The right is assignable either as to the whole or in part by an instrument in writing made in duplicate and recorded in the Office of the Minister of Agriculture (*f*).

Importation.

Section 15 (*g*) of the Act provides that "works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada under any Canadian or Provincial Act, shall upon being printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act; but nothing in this Act shall be held to prohibit the importation from the

(*a*) It is sufficient if the statutory form is substantially followed. *Garland* v. *Gemmill* (1887), 14 Canadian R. 321.
(*b*) Sect. 9, Act of 1875; sect. 12, Act. of 1886.
(*c*) Sect. 16, in both Acts.
(*d*) Sect. 10, Act of 1875; sect. 13, Act of 1886.
(*e*) Sect. 17, Act of 1875; sect. 33, Act of 1886.
(*f*) Sect. 18, Act of 1875; sect. 15, Act of 1886.
(*g*) Sect. 6, Act of 1886.

CAP. III. CANADA.

United Kingdom of copies of such works legally printed there."

If, on the other hand, a work be copyrighted in Canada, then such importation into Canada is forbidden (*a*); and by section 4 of the Imperial Act (38 & 39 Vict. c. 53), which authorized the Crown to assent to the Canadian Act of 1875, it was provided that when any book in which there is imperial copyright becomes entitled to copyright in Canada "it shall be unlawful for any person, not being the owner in the United Kingdom, of the copyright in such book, or some person authorized by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada."

It must be remembered that the Imperial Copyright Act of 1842 confers upon any person first publishing in the United Kingdom, copyright not only in the United Kingdom, but in the colonies and the dominions of the Crown. It seems to have been considered in Canada that the Act of 1875 virtually repealed the Act of 1842 so far as it concerned that colony, and that, consequently, Canadian publishers were free to republish English copyright books in Canada without any consideration whatever, but this idea was dissipated by the decision in *Smiles* v. *Belford* (*b*). This Imperial Act is, therefore, in force in Canada, and by section 17 of that Act it is forbidden to import into Canada or any other part of the British dominions a work copyrighted in the United Kingdom (*c*). Canada, however, having taken advantage of the Foreign Reprints Act, this prohibition was suspended, and importation of foreign reprints was permissible, subject to an *ad valorem* duty of $12\frac{1}{2}$ per cent. (*d*).

The position of a British author under the Act of 1875 with respect to his copyright books, therefore, was that if he copyrighted his books in Canada he was protected against piracy and importation into Canada, but he could not import himself. If he did not take out a copyright in Canada, he could, under imperial law, prevent the reprinting of his books in Canada, but he could not prevent importation from another country by reason of the suspension of the prohibition contained in section 17 of the Imperial Act of 1842 by the Order in Council of 1868 under the Foreign Reprints Act, 1847.

(*a*) See Copyright Act, 1875, sects. 11 and 13; Copyright Act, 1886, sects. 30 and 32; Customs Act, 1886 (Canada, 49 Vict. c. 4), Schedule D.

(*b*) (1877), 1 Ont. A. R. 436; *Morang & Co.* v. *Publishers' Syndicate* (1900), 32 O. R. 393.

(*c*) It has been held that the Customs Consolidation Act of 1876 is not in force in Canada; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

(*d*) See *ante*, p. 496.

On the other hand, the Fine Arts Copyright Act, 1862, confers no imperial copyright, and a British artist can only obtain copyright in his pictures under the Canadian Acts (*a*).

Complaints of Canadian publishers.

The state of the law as to copyright gave great dissatisfaction to Canadian printers and publishers. They complained that they were damaged, on the one hand, by authors belonging to the United States publishing in Great Britain and thus securing copyright in Canada, and, on the other hand, by British authors making arrangements with United States publishers whereby the latter secured the Canadian, as well as the United States, market, the consequence being Canada was flooded with cheap American reprints which Canada had no power to exclude, to the great detriment of their trade. The Berne Convention only added to these grievances; as it enlarged the class of persons who could obtain copyright in Canada without republishing there.

Canadian Act of 1889.

In 1889 the Dominion Parliament, in order to remedy these grievances, passed an Act to amend the Copyright Act, 1875. This amending Act provided that any person domiciled in Canada, or in any part of the British possessions, or any citizen of any country having an international copyright treaty with the United Kingdom, *in which Canada was included*, should be entitled to copyright in Canada, but only on condition that the work were printed and published or produced in Canada or reprinted and republished or reproduced in Canada *within one month after publication or production elsewhere*. If the author failed to take advantage of these provisions, any person domiciled in Canada might obtain a licence from the Minister of Agriculture to print, publish, or produce the author's work, paying to the latter a royalty of 10 per cent. on the retail price. If such a licence were granted importation from foreign countries of the licensed work was to be prohibited. At the same time as this Act was passed Canada expressed her desire to retire from the Copyright Union.

The passing of this Act—conceived in the interests rather of Canadian printers and publishers than of either authors or the reading public—led to a long and bitter controversy between Canada and the Mother Country, which was not terminated till the year 1900. It does not fall within the province of this work to enter into the merits of this controversy (*b*), but the

(*a*) *Graves* v. *Gorrie* (1903), A.C. 496.

(*b*) The arguments on either side will be found fully stated in a Blue Book presented to the House of Commons on 27th June, 1895. It may seem surprising that a Copyright Act should have aroused so much feeling in Canada, considering the British public takes so little interest in copyright matters. The explanation is that there

home government resolutely refused to give its necessary assent to the Act, and the Act never became effective law. When in the year 1891, after the passing of the United States Act, known as the Chace Act, British authors were enabled to obtain copyright in the United States on condition that they printed and published there, the discontent of the Canadian publishers was greatly increased. Canada has always refused to recognise the arrangement between Great Britain and the United States as an "international copyright treaty" (*a*), and does not permit United States authors to obtain Canadian copyright under her Copyright Act of 1886 (*b*). Finally, in the year 1885, directions were issued by the Customs authorities in Canada to cease to collect the duties required by the Foreign Reprints Act, 1847 (*c*).

The Act of 1900.

At length, in the year 1900, a compromise was effected and the assent of the Crown was given to a Dominion Act amending the Copyright Act, 1886 (*d*). By section 1 of this amending Act it is provided that if a book "as to which there is subsisting copyright under the Copyright Act" has been first lawfully published in any part of the British dominions other than Canada, and if it is proved to the satisfaction of the Minister of Agriculture that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a licence to reproduce in Canada, from movable or other types, or from stereotype plates, or from electroplates or from lithograph stones, or by any process for fac-simile reproduction, an edition or editions of such book designed for sale only in Canada, the Minister may, notwithstanding anything in the Copyright Act, by order under his hand, prohibit the importation, except with the written consent of the licensee, into Canada of any copies of such books printed elsewhere. Two copies may, however, be specially imported for the *bonâ fide* use of any public free library or any university or college library, or for the library of any duly incorporated institution or

was involved in the controversy the constitutional question of the right of Canada to legislate for her own affairs. The Canadian public were more interested in the constitutional principle than in the fate of this particular Bill.

(*a*) See section 4 of Canadian Copyright Act, 1886.

(*b*) Technically this contention would seem to be correct. Of course United States citizens can obtain imperial copyright by publishing simultaneously in Great Britain and the United States, but no doubt it would be more convenient for American publishers to arrange for this in Canada.

(*c*) This step was not necessarily illegal, but the effect was that the Foreign Reprints Act ceased to have any force in Canada, and foreign reprints became prohibited from importation by section 17 of the Imperial Copyright Act of 1842. See *Morang & Co.* v. *Publishers' Syndicate* (1900), 32 O. R. 393; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

(*d*) 63 & 64 Vict. c. 25 (Canadian). The Act is set out in full in the Appendix.

society for the use of such institution or society for the use of the members of such institution or society.

By section 2, the prohibition against importation may be revoked if (a) the licence to reproduce in Canada has terminated or expired; or (b) the reasonable demand for the book in Canada is not sufficiently met without importation; or (c) the book is not, having regard to the demand therefore in Canada, being suitably printed or published; or (d) any other state of things exists on account of which it is not in the public interest to further prohibit importation.

Effect of the Act of 1900.

This Act applies to books only, and further, only to books that are copyright in Canada, for the "Copyright Act" mentioned in section 1 means the Canadian Copyright Act of 1886. The objectionable feature of the 1889 Act, whereby an author practically would have lost his copyright in Canada, unless he acquired local copyright also, is removed. The Act does not touch imperial copyright, and whether a British author takes advantage of the Act or not rests entirely with himself. If he desire to do so, he must make arrangement with a local publisher, and a special Canadian edition must be printed in Canada, though the type need not be set there. Thereupon the Canadian publisher will acquire local copyright for the Canadian edition and the author or anybody else will be prohibited from importing copies of the work into Canada, but otherwise the author's imperial copyright will not be affected. If, on the other hand, the author does not desire to take advantage of the Act of 1900, that Act has no effect upon his rights whatsoever.

The Act has, it is believed, worked satisfactorily in practice, but unfortunately a section of the Canadian printing and publishing houses do not appear to be yet satisfied, and there are indications of another agitation in favour of the more stringent provisions of the Act of 1889.

Canada is not a party to the British Copyright Treaty with Austria.

NEWFOUNDLAND.

Act of 1890.

In the year 1888, the Newfoundland Parliament passed a Copyright Act which was disallowed by the Imperial Government, and the Act which now governs copyright in that colony is the Copyright Act, 1890 (*a*).

This Act is practically a textual reproduction of the Canadian Act of 1886 (*b*), with the important modification that it is

(*a*) Consolidated Statutes of 1892, chapter 110.
(*b*) See *ante* p. 515. The Canadian Act will be found in full in the Appendix.

CAP. III. NEWFOUNDLAND.

purely local in character and does not confer any copyright except upon persons domiciled in Newfoundland (*a*). The register is kept by the Colonial Secretary and literary productions must be marked with the words "Entered according to the Act of Legislature of Newfoundland, in the year , by , at the Colonial Secretary's office."

A 20 per cent. *ad valorem* duty is payable on importation of foreign reprints of British copyright books (*b*).

SOUTH AFRICA.

CAPE COLONY.

Copyright Act, 1873.

The Copyright Act of 1873 (1873, No. 2) confers copyright in books published in the author's lifetime for his life and five years after his death, with a minimum period of thirty years (section 1). Posthumous works are protected for thirty years from publication (section 2).

A book is defined by section 9 as meaning "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published," and copyright means "the exclusive liberty of printing or otherwise multiplying copies of any book" (*c*).

Registration.

Under the Act of 1883, a book of registry is to be kept in which proprietors of copyright may register their copyright and assign the same by making entries in the registry book. Fee 5*s.* in each case (sections 3 and 4). Objections to entries are to be decided by the Supreme Court (section 5).

Registry Act, 1888.

By the Books Registry Act, 1888 (1888, No. 4), four copies of every edition published in the colony must be delivered free of charge to an officer appointed by the Governor within one month after delivery from the press (section 2); one of such copies to be given to the South African Public Library, another to the Grahamstown Public Library, and the other two to be disposed of as the Governor directs (section 4). On receiving the copies the officer is to send a memorandum to the Register of Deeds, who enters the same in the registry book as required by the Act of 1873, and thereupon the provisions of that Act apply (section 5). Registered entries are published quarterly in the Gazette (section 6). Books printed outside the colony

(*a*) The modification is all the more important having regard to the decision in *Graves* v. *Garrie* (1903), A. C. 496.
(*b*) Consolidated Statutes of 1892, chap. 111.
(*c*) These definitions are the same as those in the Imperial Copyright Act, 1842.

but published in the colony are deemed to be printed within the colony.

Printers and publishers contravening the Act are liable to penalties not exceeding £5. In the Act of 1888 "book" has the same meaning as in the Act of 1873, but does not include publications such as price lists, circulars, advertisements, pamphlets, music, maps, or plans not for sale, but intended for private circulation and of which not more than fifty copies are printed, and the Governor has power to make rules (to be published in the Gazette) to exclude any books or class of books from the operation of the Act (sections 11 and 12).

Remedies for infringement.

The proprietor of the copyright may, under the Act of 1873, have an action for damages for infringement (section 6), and under the Copyright Protection Act, 1895, the importation of reprints of books registered under the Act of 1873 is prohibited, provided notice be given to the Collector of Customs. Offenders are liable to a penalty and double the value of the pirated copy. The provisions of the Act of 1895 are to be without prejudice to the proprietor's right to damages.

Designs.

There seems to be no law in this colony protecting dramatic or artistic works, but designs are protected under the Registration of Designs Act, 1894, under which the proprietor has copyright in his design for five years from registration. If a registered design be used in manufacture elsewhere than in the colony, and be not used in the colony within six months of registration, the copyright ceases. Offences against the Act involve penalties not exceeding £100 in respect of any one design, or, as an alternative, the proprietor may bring an action for damages.

Telegraphic messages.

Telegraphic messages are protected for 120 hours from the time of publication, or 130 hours from receipt, whichever shall be the shorter period, under the Telegraphic Messages Copyright Act, 1880.

Cape Colony is not a party to the British Copyright Treaty with Austria.

TRANSVAAL AND ORANGE RIVER COLONY.

These countries having become incorporated in the British Empire, they have thereby become members of the Copyright Union, by reason of the declaration made by Great Britain on signifying her adhesion to the Berne Convention that "the adhesion of Great Britain to the said Convention includes the

CAP. III. TRANSVAAL.

United Kingdom of Great Britain and Ireland and all the colonies and foreign possessions of Her Britannic Majesty" (*a*).

There is no copyright law in the Orange River Colony, but a law was on the 23rd May, 1887, promulgated in the Transvaal —then the South African Republic—dealing with this subject. Its provisions were as follows (*b*):

I.—In what Copyright consists.

Definition.

Art. 1. The author and his representatives have exclusively the right of publishing in print, writings, drawings, charts, musical or theatrical works, and oral addresses, as well as the right of publicly performing or representing dramatic-musical and dramatic works.

All performances or representations to which admission is obtained, for one or several occasions, by payment in money or *la prestation d'une valeur*, even when a person cannot be present without election, are equivalent to public performances or representations.

Art. 2. The following have the same rights as authors:

(*a*) Publishers, in works mentioned in Art. 1, when they are composed of works contributed by various collaborators.

(*b*) Charitable foundations and other legal bodies, associations and societies, in works published under their directions.

(*c*) Translators in their translation.

Moreover when a work is composed of parts contributed by different collaborators, each one of them, in the absence of agreement to the contrary, has copyright in his own work.

Anonymous works.

Art. 3. In the case of anonymous or pseudonymous works published in print, the publisher is treated as the author, or if the publisher's name does not appear on the title-page, or if none, on the cover, the printer, until some third person makes himself known as the person entitled in the manner prescribed in Arts. 10 and 11, except the time fixed for the deposit in Art. 10.

Laws.

Art. 4. Except in cases determined by the government on the advice of the executive council, there is no copyright in laws, ordinances, decrees, and other documents, which the

(*a*) See letter of 6th May, 1903, from the British Government to the International Bureau at Berne.

(*b*) Translation taken from the French translation of M. Ernest Chavegrin given in Lois françai[illegible]t étrangères, par M. Lyon-Caen. Reference should be made to the Dutch La[illegible] the 28th June, 1881, from which this is taken almost word for word,

public authorities publish to the world in writing or in print.

Art 5. The author has the exclusive right of publishing printed translations: Translations.

(*a*) Of his works not published in print, including oral addresses.

(*b*) Of his works published in print, on condition that on the title-page, or if none, on the cover of the copies of his first edition, he expressly reserves the right in question for one or more specified languages, and also that he publishes his printed translation within three years from his first edition.

In the case of works appearing in separate volumes or parts, the period is calculated separately for each part or volume.

Art. 6. When the same work is published simultaneously in several languages, one of the editions is considered the original, and the others as translations. Simultaneous publication.

The author is entitled to designate on the title-page or cover, the edition which he intends to treat as the original.

In the absence of indication, the edition published in the mother-tongue of the author is considered the original.

Art. 7. Copyright in works published in print does not prevent other persons making extracts from them and inserting them in other works, with the object of criticising or discussing them. Extracts.

It is permissible to reproduce, with a mention of the source, reports or articles published in daily, weekly, or monthly papers, unless copyright has been expressly reserved at the head of the articles or reports in question, and the formalities prescribed by Art. 10 have been observed.

Art. 8. Copyright in oral addresses does not prevent reports of debates taking place in any public assembly. Oral addresses.

Art. 9. Copyright is considered personal property, can be assigned in whole or in part, and is transmissible to heirs. It cannot be taken in execution. Assignment.

II.—The conditions to which the recognition of Copyright in works published in print is subject.

Art. 10. The author or his representatives, the publisher or printer of every work published in print, must, under penalty of forfeiture, in the two months following publication, and besides, in the case of translations, in the period fixed by Art. 5, deposit at the office of the *Registrator* three copies, each having Registration.

CAP. III. TRANSVAAL.

on the title-page or cover the signature of the depositor written by himself, with his address and date of publication.

The deposit must be accompanied by a sworn declaration of the printer, attesting that the work has been printed in his establishment situate within the domains of the Republic.

Art. 11. The registrator shall give the depositor a dated receipt. A duplicate of this receipt is entered on a register kept in his office, which any one may consult gratuitously, and from which any one may obtain extracts or copies at his own expense. The government shall settle the form of receipt and regulate the keeping of the register.

The 'Staats Courant' shall contain every month a notice of the works and translations deposited.

Art. 12. The author loses the exclusive right of representation in dramatic-musical or dramatic works published in print, unless this is expressly reserved on the title-page or cover of the first edition.

III.—Duration of Copyright.

Duration.

Art. 13. Copyright in works published in print lasts fifty years from the first publication, dating from the receipt mentioned in Art. 11.

If the author survives this period without having alienated his right, he preserves it during his life. This provision does not apply to the persons entitled to copyright enumerated in Art. 2 (*a*) and (*b*).

Art. 14. Copyright in works not published in print, including oral addresses, lasts for the life of the author and thirty years afterwards.

Art. 15. The exclusive right of performance or representation of dramatic and dramatic-musical works lasts,—

(1) For those not published in print, during the life of the author and thirty years after.

(2) For those published in print with a reservation of the exclusive right, ten years from the date of the delivery of the receipt mentioned in Art. 11.

Art. 16. The exclusive right of translation lasts,—

(1) In the case of unpublished works, including oral addresses, as long as copyright.

(2) In the case of published works, five years from the delivery of the receipt mentioned in Art. 11.

Art. 17. In respect to works composed of volumes or separate parts, the duration of copyright is calculated separately for each part or volume.

IV.—Protection of Copyright.

Protection of copyright.

Art. 18. Any person who infringes copyright, or sells, imports, or circulates, puts on the market, or has in his possession for sale a work infringing copyright, is liable to a civil action for damages on the part of the author or his representatives.

Art. 19. An author or his representatives may seize copies published in print in defiance of their right, and may demand the confiscation of such copies for their own benefit, or for destruction.

These measures do not apply to isolated copies found in the possession of individuals who do not sell them and have only acquired them for their personal use.

V.—Transitory Provisions.

Works published before this law.

Art. 20. Copyright cannot be had in a work published before the coming into force of this law, unless in the six months before this date the author or his representatives, the publisher or printer, deposits at the office of the registrator three copies, each bearing on the title-page or cover the signature of the depositor written by himself, his address, and the date of the first edition.

This date, subject to proof to the contrary, is the commencement of the duration of the right.

A declaration in accordance with Art. 10 (2) must be delivered also in this case.

Art. 21. The registrator shall deliver to the depositors a dated receipt, a duplicate of which shall be entered on the register kept in his office; any one may consult the register without payment, and obtain copies and extracts at his own expense.

The 'Staats Courant' shall contain a notice every month of the works and declarations received by the registrator, with information of the dates assigned by the depositors to the first edition of their works.

VI.—Final Provisions.

Art. 22. Of the three copies deposited according to Arts. 10 and 20, one shall remain in the office of the registrator, a second shall be placed in the state library, the third shall be placed as the government shall determine.

CAP. III. TRANSVAAL.

Art. 23. This law comes into force three months after its publication in the 'Staats Courant.'

By a resolution of the first Volksraad of 25th June, 1895, the president of the late South African Republic was authorized to assure, by proclamation, the advantages of the above law to proprietors of copyright in works published and printed in any country or colony, under condition of reciprocity being assured to works published and printed in the Transvaal. The power to make such a proclamation is, apparently, now vested in the Governor.

Maps of South Africa.

By proclamation, dated 19th April, 1902, issued by Lord Milner, it is provided that the copyright in all maps of the South African possessions of the Crown, made or drawn by the Field Intelligence Department of the troops in South Africa and published in the Transvaal, shall vest in the General Officer commanding the said troops. Three copies of any map of any part of these South African possessions, signed by a person duly authorised by the said General Officer, must be deposited at Pretoria within two months of publication in the Transvaal, otherwise the provisions of Article 10 of the Law of 1887 are not to apply.

INDIA.

Copyright in literary works is regulated in India by Act No. 20 of 1847, passed on the 18th of December, 1847. The preamble of the Act recites that it was passed by reason of doubts existing whether the right called copyright could be enforced by the common law of England in the parts of the territories governed by the East India Company where English common law had been introduced. And whether the right could be enforced by virtue of the principles of equity and good conscience in the other parts of the territories governed by the East India Company. And because it was desirable that the existence of the said right should be placed beyond doubt and be made capable of easy enforcement. And it was doubtful whether the English Act of 5 & 6 Vict. c. 45, contained sufficient provisions for the enforcement of the said right by the proprietors thereof in every part of such territories.

Literary works.

The Act, which does not however contain an interpretation clause (*a*), follows the English Act as to the period of duration and other essential features.

(*a*) See the Press Act No. 25 of 1867, *post*, p. 814.

It does not contain the provisions of sections 6 to 10 of the English Act relating to delivery of copies (*a*).

A register is to be kept in the office of the Secretary to the Government of India for the Home Department (*b*).

The fee for inspection of an entry is two annas: for a copy of an entry two rupees. Such copies do not require to be impressed with a stamp: for an entry of copyright two rupees.

Applications to expunge entries are to be made to the Supreme Court of Calcutta, or if the court be not then sitting to any judge of such court sitting in chambers.

Court in which proceedings are to be taken.

Under section 7 (*c*) as amended by Act No. 13 of 1876, if any person shall print or cause to be printed either for sale or exportation any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book so unlawfully printed without such consent as aforesaid, such offenders shall be liable to a suit in the highest local court exercising original civil jurisdiction (*d*).

It will be observed that knowledge of unlawful printing is not necessary.

Sect. 17 of the English Act relating to importation is omitted from the Indian Act (*e*).

Also the sections 20 to 22 and all provisions relating to musical and dramatic works.

The Act contained no provision for limitation of civil actions (*f*).

The ordinary form of procedure of the Zillah and other local courts may be used instead of actions in detinue and trover for recovery of pirated copies and damages.

Press Act of 1867.

Under the law of 1867 (No. 25) for regulating printing presses and newspapers:

Sect. 1. Book in this Act includes every volume, part or division of a volume, and pamphlet in any language, and every sheet of music, map, chart or plan separately printed or lithographed.

Sect. 3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) of the publisher and his place of residence.

(*a*) See the Press Act, No. 25, of 1867.
(*b*) See Press Act, s. 18.
(*c*) Sect. 15 of 5 & 6 Vict. c. 45.
(*d*) Petition of Hameedoollah. L. R. Calc. 6, p. 499.
(*e*) See the Sea Customs Act of 1878.
(*f*) See the Indian Limitation Act of 1877.

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Sect. 5. No printed periodical work containing public news or comments on public news shall be published in British India except in conformity with the rules hereafter laid down.

Deposit.

Sect. 9. Three printed or lithographed copies of the whole of every book printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be produced, and also of any second or subsequent edition which shall be so produced with any additions or alterations, whether the same be in letter-press or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been produced before or after this Act shall have come into force, shall within one calendar month after the day in which any such book shall first be delivered out of the press, and notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed or lithographed at such place and to such officer as the Local Government shall, by notification in the official 'Gazette,' from time to time direct.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to any periodical work published in conformity with the rules laid down in section 5.

Sect. 10. Such officer shall thereupon give a receipt in writing for the copies so received, and if the book is for sale to the public, shall, on the publication thereof, pay the publisher for the same copies at the rate at which the book shall be *bonâ fide* sold for cash to the public.

Sect. 11. One copy is to be transmitted to the Secretary of State for India, another to be disposed of as the Governor-General in Council shall direct, and the remaining copy, after a memorandum containing the particulars hereinafter mentioned respecting the book shall have been registered as hereinafter provided, shall be deposited in such public library or otherwise disposed of as the local government shall direct.

Persons offending against section 3 may be punished with fine not exceeding 5000 rupees, or imprisonment up to two years, or both.

Printers who do not supply copies of books shall forfeit, besides the value of the copies, a sum not exceeding 50 rupees.

Publishers, &c., not supplying the printer with maps, &c., shall forfeit the value of the maps, &c., which they ought to have supplied, and in addition a sum not exceeding such value.

Sect. 18. An office and an officer are to be appointed by the local government, and a book is to be kept called a Catalogue of Books printed in British India, wherein is to be registered a memorandum of every book delivered, under section 9. Such memorandum (so far as practicable) is to contain the following particulars: Registration.

(1) Title of the book, the contents of the title-page, with a translation into English of such title and contents if not in the English language.
(2) The language in which the book is written.
(3) Name of author, translator, or editor of the book or any part thereof.
(4) The subject.
(5) Place of printing and publication.
(6) Name or firm of printer or publisher.
(7) Date of issue from press or of publication.
(8) Number of sheets, leaves, or pages.
(9) Size.
(10) First, second, or other number of the edition.
(11) The number of copies of which edition consists.
(12) Whether the book is printed or lithographed.
(13) The price to the public.
(14) Name and residence of the proprietor of the copyright or any portion of the copyright.

The memorandum is to be made as soon as possible.

Every registration under this section shall, upon payment of two rupees to the officer keeping the catalogue (*a*), be deemed to be an entry in the book of registry kept under the Act of 1847.

Sect. 19. The memoranda registered are to be published quarterly in the local 'Gazette,' and copies are to be sent to the Secretary of State and the Secretary to the Government of India for the Home Department.

(*a*) All books becoming the property of the Government for educational purposes are exempted from this payment.

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4. The Governor-General of India in Council may, by notification in the 'Gazette of India,' exclude any class of books from the operation of the Act.

Under this provision the following have been exempted :—

(1) Acts of legislative councils without notes or commentaries.
(2) Price lists and tradesmen's circulars.
(3) Catalogues of books and other articles, auctioneers' notices and advertisements.
(4) Playbills comprising advertisements of theatrical and musical entertainments.
(5) Decisions of courts of law without notes or commentaries.
(6) Petitions and appeals addressed to constituted authority under the provisions of law.
(7) Testimonials of private individuals or public officers.
(8) Annual reports of schools, banks, societies, and firms.
(9) Almanacs and calendars.
(10) Labels affixed to articles of commerce.

Limitation of actions.

Under the Indian Limitation Act of 1877 (which repealed the Act of 1871) (No. 15 of 1877), section 4, and the second Schedule (No. 40), actions for compensation for infringement of copyright must be brought within three years of the date of infringement.

Injunctions.

Under the Specific Relief Act, 1877 (No. 1 of 1877), section 54, illustration (v.), perpetual injunctions may be granted to restrain infringement of copyright, unless the work of which copyright is claimed is libellous or obscene; and under section 55 (*a*), the court may order the copies produced by piracy to be given up or destroyed.

Importation.

Under the Sea Customs Act of 1878 (No. 8 of 1878), section 18 (*a*), no book printed in infringement of any law in force in British India on the subject of copyright shall be brought, whether by land or sea, into British India when the proprietor of such copyright, or his agent, has given to the chief customs authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire. The penalty for unlawful importation in confiscation of the books and a fine equal to not more than three times their value, and in any case not to exceed 1000 rupees.

Stamps.

Assignments of copyright by entry on the register are still free from the stamp duty: see the Stamp Act, 1879, Schedule II., No. 5.

(*a*) *Baker* v. *Sutherland*, 8 Beng. L. R. 298

Under the Civil Procedure Code of 1882 (Law No. 14 of 1882), which came into force on the 1st June, 1882, temporary injunctions may be granted to restrain infringement (section 492, and see Form No. 166 of Schedule IV.), where it is proved by affidavit or otherwise that any property in dispute in the suit is in danger of being damaged by any party to the suit. And the said Schedule IV. contains forms of concise statements of claim and of injunctions in actions for infringement of copyright, Nos. 114 and 166. Procedure.

The Presidency Small Cause Courts Act of 1882 (Act 15 of 1882), section 19, provides that the Small Courts shall have no jurisdiction in suits for compensation for the infringement of copyright.

There are no provisions relating to musical and dramatic works in India. Musical and dramatic works.

The Inventions and Designs Act of 1888 (which received the assent of the Governor-General on 16th March, 1888) (No. 5 of 1888), Part II., sections 50–62, contains the following provisions as to designs: Part II., section 50 (1). In this part, unless there is something repugnant in the subject or context: Designs. Definition.

(1) Design means some peculiar shape, configuration or form given to an article, or arrangement of lines or the like used on or with an article, but not the article itself.

(2) Copyright means the exclusive right to apply a design to an article.

(3) The author of any new and original design shall be considered the "proprietor" thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case that person shall be considered the proprietor; and every person acquiring for good or valuable consideration a new and original design, or the right to apply the same to any article, either exclusively of any other person or otherwise, and also every person on whom the property in the design or the right to the application thereof shall devolve, shall be considered the "proprietor" of the design in the respect in which the same may have been so acquired, and to that extent but not otherwise.

51 (1) Any person, whether a British subject or not, claiming to be the proprietor of any new and original design not previously published in British India, may apply to the Governor-General in Council for an order for the registration of the design. Application for order for registration of design.

(2) The application must be in writing in the form or to

the effect of the 5th Schedule, and must contain a statement of the nature of the design and be accompanied by as many copies of drawings, photographs, or tracings thereof, not being fewer than four, as may be required by the rules for the time being in force under this part.

(3) It must be left with, or sent by post to, the secretary (*a*), and the date of delivery or receipt thereof in the office of the secretary shall be endorsed thereon and recorded in that office.

Registration in register of designs.

52 (1) Upon the application the Governor-General in Council may, after such inquiry as he thinks fit, make an order authorizing the registration of the design.

(2) When an order has been made under sub-s. (1), the secretary shall cause the design to be registered in a book to be kept by him for the purpose, and to be called the register of designs.

(3) The date of registration shall be recorded in the register.

Duration of copyright.

53. When a design is registered, the proprietor thereof shall, subject to the other provisions of this part, have copyright in the design during five years from the date of registration.

Marking registered designs.

54 (1) Before delivery or sale of any article to which a registered design has been applied, the proprietor of the design shall cause the article to be marked with the word "registered" either in full or in an abbreviated form.

(2) If he fails to cause the article to be so marked, the copyright in the design shall cease unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Effect of exhibiting unregistered designs at exhibitions.

55. If the proprietor of a design exhibited at an industrial or international exhibition, certified as such by the Governor-General in Council, causes an application for an order for the registration of the design to be delivered to or received by the secretary within six months from the date of the admission of the design into that exhibition, the design shall not be deemed to be a new and original design not previously published in British India within the meaning of section 51 by reason only of the design having been exhibited at the exhibition.

Mutation of names in register of designs.

56. Any person in whom the copyright in a design has become vested may apply to the secretary for the entry of his

(*a*) Secretary to the Government of India appointed to discharge functions of the Secretary under this Act. Sect. 4 of Act, sub-s. (8).

name in the register of designs as proprietor of the copyright, and the secretary may, if he thinks fit, cause the entry to be made.

Suit for infringement of copyright.

57 (1) The registered proprietor of a design may institute a suit in the District Court (*a*) for the recovery of any damages arising from the application by any person to any article of the design or of any fraudulent or obvious imitations thereof for the purpose of sale, or from the publication, sale or exposure for sale by any person of any articles to which the design, or any fraudulent or obvious imitation thereof, has been applied, that person knowing or having reason to believe that the proprietor had not given his consent to such application.

(2) When the Court makes a decree in a suit under this section, it shall send a copy of the decree to the secretary, who shall cause an entry thereof to be made in the register of designs.

Registration of cessation of copyright.

58. When from the expiration of the term of copyright or from any other cause, the copyright in a design has ceased, the secretary shall cause an entry with respect to the cessation of the right to be made in the register of designs.

Rectification of register of designs.

59 (1) A High Court (*b*) may, on the application of any person aggrieved by an entry in the register of designs, or by the omission of an entry therefrom, make such order for the rectification of the register as it thinks fit.

(2) An order under sub-section (1) may declare copyright in a design not to have been acquired.

(3) A copy of the order shall be forwarded by the court to the secretary, who shall cause an entry thereof to be made in the register of designs.

(4) When the secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the secretary.

Power to High Court to stay proceedings on, or dismiss application for rectification of the register.

60. A High Court to which an application has been made under the last foregoing section may stay proceedings on, or dismiss the application if, in its opinion, the application would be disposed of more justly or conveniently by another High Court.

Under section 61 four copies at least of drawings, photographs, or tracings accompanying an application of an order for the registration of a design in respect of which such an

(*a*) District Court has the meaning given to that term by Code of Civil Procedure. Law XIV. of 1882.

(*b*) High Court = High Court of Code of Criminal Procedure, 1882 (No. X. of 1882), in reference to proceedings against European British subjects.

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order has been made must be delivered to the secretary when the design is registered.

Entries and documents on the register shall be deemed public documents for purposes of evidence, and shall be open to the inspection of any person.

An agent may act for a principal.

Section 62 provides as to fees.

PART VI.

COPYRIGHT IN FOREIGN COUNTRIES.

FRANCE.

Copyright in France.

THE infringement of copyright was formerly visited with far heavier penalties in France than in this country. The printing a work, the sole right to which belonged to another, was regarded as little better than theft; indeed, it was said that such conduct was worse than to enter a neighbour's house and steal his goods; for, in the latter case, negligence might be imputed to him for permitting the thief to enter, whereas in the former, it was stealing a thing confided to the public honour (*a*).

Protection, however, was only afforded by privileges given by Royal edicts, and was accorded sometimes to authors, sometimes to booksellers, sometimes to persons possessing neither of these qualifications: these privileges depended on the pleasure of the king.

The protection afforded in this way by the various edicts of the French kings to the authors of literary works was finally taken away by the famous decree of the National Assembly, by which all privileges of whatever kind were abolished (*b*).

Before entering into any details of the law of copyright under the different heads of literature, the drama, music, and art, it will tend to make the subject clearer, and will be more useful for reference, first, to give an account of the principal laws on the subject in their order of date, and then touch upon the application of these laws.

The first decree on copyright is that of 13th–19th January, 1791, concerning public performances.

Decree of 13th Jan., 1791.

Art. 1. Any citizen may open a public theatre and give representations of pieces of every kind on condition of making

(*a*) Lowndes on Copy.
(*b*) 4th of August, 1789; Lowndes on Copy., App. 116.

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a declaration, previously to the establishment of his theatre, at the local municipality (*a*).

Art. 2. The works of authors dead five years or more before the date of this decree are public property, and may, notwithstanding all ancient privileges which are abolished, be represented in any theatre.

Art. 3. The works of living authors cannot be represented in any public theatre throughout France without the formal consent in writing of such author under penalty of confiscation of the gross receipts from such representations for the benefit of the authors (*b*).

Art. 4. The provision of article 3 applies to works already represented, whatever the former regulation may have been; nevertheless agreements which may have been made between comedians and living authors or authors dead within five years shall be performed.

Art. 5. The heirs or assigns of authors shall be the proprietors of their works for the period of five years after the death of the author (*c*).

The drama. Decree, 19th July, 1791.

Then follows a further decree on the same subject dated 19th July–6th August, 1791.

Art. 1. Conformably to the provisions of articles 3 and 4 of the decree of 13th January last, concerning public performances (*spectacles*), the works of living authors, although represented before that date, whether engraved or printed or neither, cannot be represented in any public theatre throughout the kingdom without the formal written consent of the authors, or in the case of authors dead within five years before the 13th day of January, that of their heirs or assigns, under penalty of confiscation of the gross receipts from such representations for the benefit of the author, his heirs, or assigns.

Art. 2. Agreements between authors and managers (*entrepreneurs de spectacles*) shall be perfectly free, and no municipal or other public functionaries may tax any play, nor diminish nor increase the price agreed upon; the remuneration of authors, agreed upon between them or their representatives and such managers, can neither be seized nor held back (*arrêtée*) by the creditors of such manager. A decree was passed on the 30th August, 1792, relating to agreements between authors and managers.

(*a*) The liberty was suppressed in 1806, and not re-established till the decree of the 6th Jan., 1864.

(*b*) The provision as to confiscation of receipts is reproduced in Art. 428 of the penal code now in force.

(*c*) The duration of the right has been successively extended by the laws of the 3rd August, 1844, 8th April, 1854, and the 14th July, 1866.

Then follows the decree of the National Convention of 19th–24th July, 1793, relating to the right of property of authors in works of literature (*écrits*) of all kinds, of composers of music, of painters and draughtsmen (*dessinateurs*). This may be looked upon as the fundamental law on copyright although the majority of its provisions have been modified by subsequent legislation. They are as follows:

Literary copyright. Decree, 19th July, 1793.

Art. 1. The authors of writings (*écrits*) of all kinds, composers of music [architects, sculptors] (*a*), painters and draughtsmen, who engrave pictures or drawings, shall enjoy during their whole life the exclusive right to sell, and distribute their works within the territory of the Republic, and to assign their property in such right in whole or in part. [Sculptors and ornamental designers are to have the same rights whatever may be the merit or destination of the work.] (*b*)

Duration.

Art. 2. Their heirs or assigns shall enjoy the same right for the space of ten years after the death of the author (*c*).

Art. 3. The magistrates (*officiers de paix*) (*d*) shall be bound to confiscate for the benefit of the authors, composers, painters or draughtsmen and others, their heirs or assigns, all copies of editions printed or engraved without the formal permission in writing of the authors.

Art. 4. Every infringer (*contrefacteur*) shall be bound to pay to the true proprietor a sum equivalent to the price of 3000 copies of the original edition (*e*).

Art. 5. Every seller of a pirated edition, if not convicted of being the infringer, shall be bound to pay to the true proprietor a sum equivalent to the price of 500 copies of the original edition (*e*).

Art. 6. Every citizen who produces a work whether of literature or engraving of whatever kind, must deposit two copies at the National Library or at the Stamp Office of the Republic, for which he will get a receipt duly signed, failing which he can have no right of action against an infringer (*f*).

(*a*) These words were inserted by the Law of 11th March, 1902.

(*b*) This provision is also new (Law of 11th March, 1902). The enumeration contained in this article is not exclusive: it applies to all works of art, and was held to apply to manufacturing designs until the law of 18th March, 1806. 'Lois françaises et étrangères,' by M. Lyon-Caen. Paris, 1889. And see note to Art. 7.

(*c*) The time has been successively increased by the Laws of the 5th Feb., 1810, the 8th April, 1854, and the 14th July, 1866.

(*d*) By the Law of June, 1795, these functions were transferred to (*commissaires de police*) police superintendents, or where there were none to the magistrates (*juges de paix*).

(*e*) But see the Penal Code of 1810, p. 541.

(*f*) The deposit is now regulated by the Law on the Liberty of the Press of the 29th July, 1887. See p. 545.

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Art. 7. The heirs of an author of a work of literature or engraving, or of every other production of the intellect or genius which can be classed as a work of art, shall have the exclusive property of such work during ten years (*a*).

Posthumous works.

Proprietors by descent, or any other title, of posthumous, literary, and dramatic works have the same rights as the author; and the provisions of the law concerning the exclusive property of authors and its duration are applicable to such proprietors (*b*).

Law of 1st Sept., 1793.

A further law was enacted on the 1st September, 1793, in relation to theatres and to the right of representation and performance of dramatic and musical works. By this law the decree of the 30th August, 1792, was repealed and all the provisions of the laws of the 13th January, 1791, and the 19th July, 1793, were made applicable, and the supervision of public performances was declared to continue to belong exclusively to the municipal authorities. Managers or partners were directed to keep a register in which they should enter (the entries to be signed by the police officers on duty) at every performance

(*a*) The time was successively increased by the Laws of the 5th Feb., 1810, and 8th April, 1854, and is now fifty years under the Law of the 14th July, 1866. These provisions embrace "les auteurs d'écrits en tout genre," and upon this expression M. Merlin has made the following commentary: "Mais il ne faut pas séparer, dans cet article, les mots *écrits en tout genre* de l'expression *auteurs*; et la propriété, dont cet article déclare que les *écrits en tout genre* sont susceptibles, ne peut évidemment être réclamée que par ceux qui en sont *auteurs*, dans la véritable acception de ce terme.

"Or, le mot *auteurs*, quel sens a-t-il en général? Quel sens a-t-il relativement aux écrits? Quel sens a-t-il dans la loi du 19 juillet 1793?

"En général, le mot *auteurs* désigne, suivant la définition qu'en donne le Dictionnaire de l'Académie française, celui qui est la première cause de quelque chose; et il est aussi, suivant la même définition, synonyme d'inventeur.

"Appliqué aux écrits, le mot *auteur* se dit (toujours suivant le même Dictionnaire) *de celui qui a composé un livre, qui a fait quelques ouvrages d'esprit en vers ou en prose;* et il est bien clair qu'en ce sens, le mot *auteur* est opposé à *copiste*.

"Enfin, la loi du 19 juillet 1793 ne permit pas de douter qu'elle n'exclue également les copistes de la dénomination d'auteurs. *Les héritiers de l'auteur d'un ouvrage de littérature ou de gravure*, dit-elle, art. 7, *ou de toute autre production de l'esprit ou du génie, qui appartient aux beaux-arts, en auront la propriété exclusive pendant dix années.* Ces termes, *ou de toute autre production de l'esprit ou du génie, qui appartient aux beaux-arts*, ne sont ni obscurs ni équivoques. Ils signifient clairement que les productions de l'esprit ou du génie sont de deux sortes; que les unes consistent en ouvrages de littérature; que les autres appartiennent aux beaux-arts; mais que nul ne peut être réputé auteur soit d'un ouvrage de littérature, soit d'un ouvrage d'arts, si ce n'est pas à son esprit ou à son génie qu'en est due la production.

"Donc, les expressions d'*écrits* en tout genre ne sont employées, dans l'art. 1er de la même loi, que pour désigner tous les genres de compositions littéraires.

"Donc, elles n'y désignent pas les écrits qui ne seraient pas de compositions, mais de simples copies.

"Donc, celui qui ne fait que copier une composition littéraire ne peut jamais être réputé auteur de la copie de cette composition, ni par conséquent en avoir la *propriété*, dans le sens attaché à ce mot par la loi du 19 juillet 1793, et par le code pénal 1810." Merlin, Répertoire de Jurisprudence, titre 'Contrefaçon,' § xi.

(*b*) Decrees, 8th Dec., 1805, 8th June, 1806; see also decree of 15th Oct. 1812.

the pieces played to show the number of performances of each piece.

Posthumous works were dealt with by the law of the 22nd March, 1805, which enacted "that the owners, by inheritance or any other right, of a posthumous work have the same rights as the author, and the provisions of the laws on the exclusive property of authors and on their duration are applicable, provided that the posthumous works are printed separately and without being joined to a new edition of works already published and become public property (*a*). Books of the church were specially dealt with by the law of the 29th March, 1805, and official documents by the law of 20th February, 1809.

Law of 22nd March, 1805.

Under the law of the 8th June, 1806, authors and managers shall be free to fix by mutual agreement the remuneration payable to the former, either in a fixed sum or otherwise.

Law of 8th June, 1806.

The local authorities are to keep a strict eye on the performance of these agreements.

The proprietors of posthumous dramatic works have the same rights as the author, and the provisions relating to the property of authors and its duration are applicable to such works as is provided by the law of the 22nd March, 1805.

Under the law of the 5th February, 1810, confiscation and fine for the benefit of the State, without prejudice to the provisions of the penal code, will take place in the following cases:

Law of 5th Feb., 1810.

If there is a piracy, that is to say if a work is printed without the consent and to the prejudice of the author or publisher or their representatives.

In this case this shall be in addition to the damages to the author or publisher or their assigns; and the edition or the pirated copies shall be confiscated to their profit (*b*).

The penalties and the damages shall be decided by the police or criminal court according to the circumstances and the law.

Offences shall be reported by the inspectors of the press and of the book trade, police officials, and in addition by the officers in charge of the custom house as to books coming from foreign countries.

A law of the 20th February, 1809, regulated the publication of manuscripts belonging to libraries and other institutions.

The "Code Civil," Articles 544, 1302, the *Code de Procédure Civile*, Articles 59 and 1036, and the *Code d'instruction*

Procedure and remedies.

(*a*) This law is applicable to musical works, and by the law of the 8th June, 1806, was declared to be applicable to dramatic works. 'Lois françaises et étrangères,' par M. Lyon-Caen.

(*b*) Repealed by the Penal Code of 1810.

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criminelle, Articles 637 and 638, define property in general, indicate the remedies and procedure of injured parties, and limit the time during which actions may be brought. These general provisions are also applicable to copyright.

Penal Code on piracy.

The *Code Pénal* of March 1810, Articles 425 to 429, makes piracy a misdemeanor (*délit*). These articles are as follows:

425. "*Toute édition d'écrits, de composition musicale, de dessin, de peinture, ou de toute autre production, imprimée ou gravée en entier ou en partie, au mépris des lois et réglements relatifs à la propriété des auteurs, est une contrefaçon; et toute contrefaçon est un délit.*

426. "*Le débit d'ouvrages contrefaits, l'introduction sur le territoire française d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger, sont un délit de la même espèce.*

427. "*La peine contre le contrefacteur, ou contre l'introducteur, sera une amende de cent francs au moins et de deux mille francs au plus; et contre le débitant, une amende de vingt-cinq francs au moins et de cinq cents francs au plus. La confiscation de l'édition contrefaite sera prononcée tant contre le contrefacteur que contre l'introducteur et le débitant. Les planches, moules, ou matrices des objets contrefaits, seront aussi confisqués.*

428. "*Tout directeur, tout entrepreneur de spectacle, tout association d'artistes, qui aura fait représenter sur son théâtre des ouvrages dramatiques au mépris des lois et réglements relatifs à la propriété des auteurs, sera puni d'une amende de cinquante francs au moins, de cinq cents francs au plus, et de la confiscation des recettes.*

429. "*Dans les cas prévus par les quatre articles précédents le produit des confiscations, ou les recettes confisquées, seront remis au propriétaire, pour l'indemniser d'autant du préjudice qu'il aura souffert: le surplus de son indemnité, ou l'entière indemnité, s'il n'y a eu ni vente d'objets confisqués ni saisie de recettes, sera réglé par les voies ordinaires*" (*a*).

The Dramatic Law of 3rd Aug., 1844.

The law of 3rd August, 1844, provides that the widows and children of the authors of dramatic works shall have from that date the right during twenty years to authorize the representation and to confer the advantages arising from such works in conformity with the provisions of Articles 39 and 40 of the imperial decree of the 5th February, 1810 (*b*). Article 39 of that decree made the widow's right dependent on the marriage agreement. Article 40 provided that authors whether natives or foreigners (*c*) of every work printed or engraved,

(*a*) *Code Pénal*, lib. iii. tit. ii., Art. 425–429.
(*b*) Repealed by the law of the 14th July, 1866.
(*c*) Understood to be confined to works published in France. 'Lois françaises et étrangères,' par Lyon-Caen.

might assign their right to a printer or bookseller or any other person who would then be substituted in their place, for them and their representatives according to the preceding article.

Reciprocity. Decree, 28th March, 1852.

By the decree of 28th March, 1852, it is made unlawful without the permission of the author to publish a work already published in a foreign country with which no copyright convention exists. This decree will be dealt with more fully hereafter (*a*).

Copyright Law, 8th April, 1854.

By the law of 8th April, 1854, repealed by the law of the 14th July, 1866, the twenty years term of copyright vested in the children of the author was extended to thirty years (*b*).

On the 6th January, 1864, a new law was enacted in relation to theatres. It provided as follows:—

Any person can construct and carry on a theatre, on condition of making a declaration at the Ministry of the Household and Fine Arts, and at the *préfecture de police* for Paris, in the departments, at the *préfecture*.

Theatres which appear more particularly deserving of encouragement may be subsidized by the State or by the Communes. Managers (*entrepreneurs*) of theatres must comply with the regulations, decrees, and rules, in all matters relating to public order, security, and health.

The existing laws on the management and closing of

(*a*) The practical importance of this decree has been considerably restrained by the numerous treaties with foreign countries. 'Lois françaises et étrangères,' par Lyon-Caen.

(*b*) By the law of the 9th Dec., 1857, the laws regulating literary and artistic property in the mother country were declared to be effective in the colonies of Martinique, Guadeloupe, French Guiana, Réunion, Senegal, Goren, and the French establishments in India and Oceania. [Algiers is not mentioned, but it is understood that the French laws apply generally.] Subsequent legislation is made applicable to the French colonies by the law of the 29th Oct., 1887, that is to say, the following laws:

Articles 2, 3, 4, and 5 of the law of the 13th Jan., 1791, relating to property in dramatic works;

Articles 1 and 2 of the law of 19th July, 1791, on the rights of authors in dramatic productions;

The law of the 19th July, 1793, relating to literary and artistic property;

Articles 2 and 3 of the law of the 1st Sept., 1793, relating to the property in dramatic works;

The law of the 13th June, 1795, relating to the authorities charged with reporting offences of piracy;

The law of the 22nd March, 1805, relating to property in posthumous works;

Articles 10, 11, and 12 of the 8th June, 1806, relating to the representation of posthumous dramatic works;

Articles 39, 41 (1st par. and No. 7), 42, 43, 45, and 47 of the law of the 5th Feb., 1810, relating to literary property;

The law of the 3rd Aug., 1844, relating to property in dramatic works;

The law of the 28th March, 1852, relating to literary and artistic property in works published in foreign countries;

The law of the 8th April, 1854, extending the duration of the rights of literary and artistic property.

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theatres, and the royalty established for the benefit of the poor and hospitals shall continue to be enforced.

Every dramatic work before being represented must, according to the terms of the law of the 30th December, 1852, be examined and authorized by the Minister of the Household and Fine Arts in the case of Paris theatres and by the prefects for theatres in the provinces.

The authorization may always be rescinded on grounds relating to public order.

Dramatic works of all kinds, including pieces which have become public property, may be represented at every theatre (*a*).

Plays with child actors remain forbidden. Public displays of curiosities, marionettes, les cafés dits cafés chantants, cafés-concerts and other establishments of the same kind, remain subject to the regulations now in force.

Nevertheless, these different establishments are for the future freed from the royalty established by Article 11, of the law of the 8th December, 1824, in favour of the Governors of the Provinces, and will not have to bear any charge other than the royalty for the benefit of the poor or the hospitals.

The actual managers of theatres which are not subsidized are, as against the public administration, freed from all clauses and conditions in their licences (*cahiers des charges*), which are contrary to this law.

All the provisions of previous decrees, orders, and regulations contrary to the present are repealed.

On the 16th May, 1866, the following provision was made with regard to mechanical musical instruments.

The manufacture and sale of instruments mechanically reproducing musical airs which are private property, do not constitute the act of piracy provided and punished by the law of the 19th July, 1793 (*b*).

Copyright Law, 14th July, 1866.

Lastly, we have the law of the 14th July, 1866, by which protection of copyright is given to all heirs of an author for fifty years after his death. The provisions of this law are as follows: "The duration of the rights given by former laws to

(*a*) This is, of course, without prejudice to the rights of authors. See the circular addressed to the Prefects of the Departments by the Minister of Public Education and the Fine Arts on the 11th Feb., 1889. Copyright Magazine of the Berne Convention, 1889, p. 29.

(*b*) This was obtained by the representations of Switzerland. A provision to this effect has also been introduced in the convention between France and Switzerland of 23rd Feb., 1882. A similar provision is also to be found in the Protocole de Clôture, Art. III., to the Berne Convention. By reason of this law gramophones and perforated rolls for æolian organs have been held not to be infringements. *Maquet* v. *Thibouville*, Paris Court of Appeal, 9th Jan., 1895; *Alfieri* v. *Soc. du Gramophones*, Seine, 23rd July, 1902.

the heirs, irregular successors (*successeurs irréguliers*), donees, and legatees of authors, composers, or artists, is extended to fifty years from the death of the author.

During this term of fifty years the spouse of such author, whatever may be the provisions of the marriage contract (*le régime matrimonial*), and independently of the rights of such spouse under the *régime de la communauté*, has a life interest in the rights which the deceased spouse has not alienated by assignment during life, or by will.

"Nevertheless if the author leave *héritiers à réserve* such life interest is reduced in favour of such heirs in accordance with the provisions of Articles 913 and 915 of the Civil Code (*a*).

"This interest is not given if at the time of the author's death there be a decree of separation (*séparation de corps*) in force against the spouse: it ceases as soon as the spouse re-marries.

"The rights of *héritiers à réserve* and of other heirs or successors during this period of fifty years are in other respects regulated by the provisions of the Civil Code.

"When the succession falls to the State, the exclusive right is extinguished, without prejudice to the rights of creditors, and contracts for assignment which may have been entered into by the author or his representatives."

The above laws for the most part deal with the duration of copyright and its mode of descent. In other respects the provisions are general and somewhat difficult to apply in particular cases. Hence it will be advisable to refer to the cases which have been decided in the French Courts of Law for information on many points.

Liberty of the press.

Deposit of literary works.

On the 29th July, 1881, a law was passed relating to the liberty of the press; it provides that upon publication of any printed matter, the printer (*b*) shall under the penalty of a fine of 16 to 300 francs, deposit two copies for the National Collections. The names and addresses of the proprietor and printer must also be given. In Paris this deposit shall be

(*a*) "*Héritiers à réserve*" are those heirs of a man who, by Articles 913–915 of the Civil Code, are entitled to a certain share of his property, and whom he cannot disinherit either by act *inter vivos* or by will. M. Flininaux remarks on this article: "C'est par une erreur de droit qu'il a été déclaré réductible conformément aux articles 913 et 915 du Code Civil; c'est l'article 1094 du même code, relatif au droit du conjoint, qu'il aurait fallu viser." (Flininaux, Prop. industrielle et prop. litt. et art. en France et à l'étranger: Paris, 1879. An excellent work, of which free use has been made in this chapter.)

(*b*) It has been proposed to alter this law and make the deposit compulsory on the *publisher* instead of the printer. 'Lois françaises et étrangères,' par M. Lyon-Caen. A recent circular (6th Jan., 1900) of the Minister of the Interior to the prefects calls for a more rigorous enforcement of the provisions as to deposit.

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made at the Ministry of the 'Intérieur': at the *préfecture* for the chief town of the departments: at the *sous préfecture* for the county towns of the hundred, and for other towns at the town clerk's office. The title of the work and the size of the print shall be given. *Bulletins de votes* (voting lists), commercial and trade circulars, and *les ouvrages dits de ville ou bilboquets* are excepted from this provision.

The preceding provisions are applicable to every kind of printed matter or reproductions intended to be published.

But in the case of prints, music, and generally of reproductions other than printed matter, the deposit prescribed by the preceding Article is to be of three copies.

A law of 9th February, 1895, imposes penalties for fraudulently placing an usurped name or fraudulent signature upon paintings, sculptures, designs, engravings, or music. This law has been held applicable to the case of a person putting his own name upon the work of another (*a*).

Colonies.

By the law of the 29th October, 1887, the provisions of the law regulating literary and artistic property in France were made applicable to the colonies.

Official circular.

A circular of some interest was in 1889 sent to the prefects of the departments, by the Minister of Education, on the subject of enforcing the laws for protecting copyright. The minister, after referring to an earlier circular of 1867, and to complaints from the President of the Committee of authors and dramatic composers, calls the attention of the local authorities to some points of interest.

He states that the law of the 6th January, 1864 (*b*), allowing all dramatic pieces to be represented, is of course without prejudice to the rights of authors.

Authors and theatre managers can make their own agreements now as formerly, and the authorities should see to the performance of these agreements according to the law of the 8th June, 1806 (*c*).

In the representation of pieces not public property, managers must have the written consent of the author according to the law of the 13th January, 1791, and the authorities must see to this.

Dramatic works and their titles cannot be altered or modified.

The authorities cannot tax works represented nor alter the price agreed between author and manager.

(*a*) Paris, Court of Appeal, 4th June, 1902, Ubezio.
(*b*) See p. 543. (*c*) *Ante*, p. 541.

Even in case of charitable representations it must be seen that the author's consent is given.

Literary Copyright.

The works of literature protected by the copyright laws are comprised in the terms "*écrits en tout genre*" which occur in the law of 19th July, 1793. The following are a few of the principal decisions on the meaning of this expression. Literary copyright.

A compilation effected by an author by means of analysis and classification, such as a descriptive catalogue, a nautical almanac, or a dictionary, and having a scientific or literary character, is entitled to protection. A catalogue of works of art exhibited at the Palais de l'Industrie has been protected (*a*), but not a catalogue of postage stamps (*b*). What protected.

A newspaper may reproduce news, whether telegraphic or not, received and published by another newspaper (*c*); but reports, *e.g.*, of public meetings may be the subject of copyright (*d*); and literary articles and romances in a newspaper remain the property of the author, provided it be duly registered (*e*). Public dissertation and lectures of professors cannot be published without the consent of the authors (*f*). The publication of private correspondence is not allowed without the consent of the writer or his heirs (*g*). Newspapers.

Manuscripts form a distinct category, and can only be published by the heirs or assigns, and not by the creditors of the author (*h*). A translation is the property of the translator, and cannot be copied (*i*), but it cannot be made without the consent of the author of the original or his legal representatives (*k*). Manuscripts and translations.

The duration of literary copyright is regulated by the law cited above of the 14th July, 1866. By this law the surviving widow has a right of survivorship over the works left by her husband, even when by the marriage settlement and the law of succession she has no such right in respect of other property of her husband: if the author have assigned his rights Duration. Rights of author's widow.

(*a*) Seine, 1st Aug. 1892, Societé des artistes.
(*b*) Seine, 20th Dec., 1895, Mauret.
(*c*) Cass. 8th Aug., 1861, Havas.
(*d*) Nancy, 14th April, 1902, Societé des gens de lettres.
(*e*) Cass., 29th Oct., 1830, Le Pirate.
(*f*) Paris, 18th June, 1840, Hérit. Cuvier; Lyon, 17th July, 1845, Marie; Seine, 9th Dec., 1902, Esmen.
(*g*) Paris, 11th June, 1875, Gentil.
(*h*) Dijon, 18th Feb., 1870, de Chapuys.
(*i*) Cass. 25th July, 1824, Ladvocat.
(*k*) Paris, 17th July, 1847, Leclerc.

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the widow has no right of survivorship over the purchase-money (*a*).

Rights of widower of an authoress.

The widower of an authoress has the same rights in respect of her literary works as the widow of an author.

Posthumous works.

The proprietors of posthumous works who publish them have the same rights an authors, on condition that they do not publish such works in a collection with the other works of the author (*b*).

It is the opinion of M. Pouillet that, in the case of anonymous or pseudonymous works, the life of the publisher is substituted for that of author (*c*).

The State.

The State enjoys copyright in perpetuity over works published by its order or by its agents (*d*).

Registration and deposit.

In order that an author may be fully protected, and have a right of action in cases of piracy, the printer must deposit two copies of the work at the Ministry of the Interior at Paris, and at the Prefecture for county towns: at the town clerk's office for other towns under the law of the 29th July, 1881 (*e*). A receipt is given as evidence.

The copyright of a MS., even of a play already performed, is protected without the deposit of copies, so long as it has not been made public by printing. But once printed, the author or publisher who neglects the formality of deposit in accordance with the provisions of the law, cannot prosecute infringers of his rights in either a civil or criminal court. The right does not depend upon deposit, but only the title to sue, and an author, after deposit, can sue in respect of infringements committed prior thereto (*f*).

Assignment.

Assignment of literary copyright is regulated by the general law as to assignment of property. Heirs can assign their rights in the same way as an author, either in whole, or in part, for a consideration or not. An author who has assigned the right to publish an edition of one of his works, is bound not to publish a fresh edition before the former one is exhausted (*g*).

The assignment without any reserve of a work to which an author has put his name, does not give the person to whom it is assigned the absolute disposal of it to such an extent that he can alter it by changes or additions (*h*).

(*a*) Fliniaux, l. c. p. 98.
(*b*) Fliniaux, l. c. p. 98. Law of 22nd March, 1805, *ante*, p. 541.
(*c*) Pouillet, Propriété Litteraire et artistique, 4th Ed., § 147.
(*d*) Cass. 27th May, 1842, Gros; Paris, 5th May, 1877, Peigné.
(*e*) See *ante*, p. 545. (*f*) Pouillet, §§ 432, *et seq.*
(*g*) Cass. 22nd Feb., 1847, Laurent. A publishing agreement is not assignable Seine, 30th Nov., 1892, André.
(*h*) Paris, 14th Aug., 1860, Peigné. Seine, Tr. Civ. 12th Jan., 1875, Vve. Michelet.

In those cases where an alteration in the law extends the term of copyright granted to the heirs of an author, the extended term is considered to belong to the family of the author in preference to his assigns, and the term vested in the persons to whom it has been assigned is that existing at the date of the assignment in conformity with the Civil Code, Art. 1153. Hence the extension of the term of copyright granted by the laws of 8th April, 1854, and the 14th July, 1866, is for the benefit of the author's heirs, and not of the publishers to whom he may have assigned his works (*a*).

Piracy.

Piracy under the French law is the illegal reproduction of the works of another, literary or musical, not yet public property, which reproduction is made publicly with the intention to injure, whether by printing or public representation. Piracy gives rise, as a misdemeanour, to an "*action correctionnelle*"; if the intention to injure be not proved, the author of the work reproduced may bring a civil or commercial action for compensation in respect of the damage done to him. Piracy is committed although the offender may not have completed the printing of the work.

A literal copy (*la copie servile*) of about one-fourth of a work constitutes the offence of partial piracy. *Il y a également contrefaçon, quelle que soit la matière de la reproduction ou la qualité de l'auteur ou du propriétaire de l'ouvrage contrefait. Elle est indépendante des moyens à l'aide desquels elle est produite* (*b*).

Abridgments and compilations.

An abridgment is an infringement of copyright, but the rules relating to infringement must not be applied strictly when the work in question is an historical or biographical dictionary, works of this nature being necessarily compilations, of which the elements are either in the public domain or taken from the same sources and have always inevitable points of resemblance; but it is not permissible for an author of a new work of this character to copy his predecessors and appropriate their work (*c*). Acknowledgment of the source from which extracts have been taken will not necessarily excuse a piracy.

The following are a few decisions on cases of piracy: (1) Piracy is committed from the moment there is a violation of the absolute right of property given by law, no matter what be the merit or importance of the work pirated (*d*). (2) It is a piracy to copy without authorization a work even of small

(*a*) Paris, 12th July, 1852; Cass. Ch. Crim. 29th April, 1876, Pradier; Cass. Ch. req. 20th Nov., 1877, Degorce—Cadot.

(*b*) Code du Théâtre, &c. C. Le Seune, Paris, 1878.

(*c*) Seine, 12th Jan., 1893, Larousse.

(*d*) Paris, 11th March, 1869, aff. Godchau.

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extent and to annex it to another work of a different author (*a*). (3) The composers of airs or of musical works can prevent such airs from being inserted without their consent in other works, even though they may have tolerated such insertion for a longer or shorter period.

Piracy, whether whole or partial, forbidden.

The law prohibits piracy whether total or partial. There is no doubt that the protection of the law is extended to every work in its entirety, and to all its parts. It therefore follows that partial piracy is an offence of the same order as total piracy. The law has taken care expressly to provide for this, as may be seen from the words "*en entier ou en partie*," in Article 425 of the Code Pénal (*b*).

Unauthorized translation.

M. Renouard is of opinion that unauthorized translation is not piracy, because, first, the law is silent on this point, and, secondly, "*La différence de forme extérieure du langage*," say the learned author, "*empêche qu'il ne s'établisse ni confusion, ni rivalité. Les lecteurs ne seront probablement pas les mêmes. Quiconque sera capable de comprendre l'original ne manquera pas de le préférer à une traduction plus ou moins imparfaite. La gloire de l'auteur et la propagation de ses idées, la popularité de ses productions et leurs chances de debit, ont tout à gagner par l'existence des traductions et n'ont rien à y perdre.*" But at the same time he thinks that the question is not without difficulty.

M. Renouard's views are strongly opposed by M. Pouillet (*c*), who says, "*La contrefaçon, en effet, est pour nous l'atteinte portée au droit privatif, l'usurpation de la propriété; c'est le fait de s'emparer, de profiter du travail d'autrui, sans son autorisation. Il y a contrefaçon, toutes les fois qu'on prend une œuvre qu'on n'a point faite soi-même, et que, sans permission de l'auteur, on la fait tourner à son propre profit. Si cela est, n'est-il pas certain que la traduction est une contrefaçon?*"

Owing to their generality the provisions of the law of 1793 apply to every sort of reproduction which infringes the right of property of another. The translation of a French book into a foreign tongue is such a reproduction (*d*).

The following points have also been decided:

Points of note which have been decided.

(1) That it is piracy to borrow from a published work, its subject, general plan, and the development of its episodes (*e*); (2) That it is piracy to publish in the form of a pamphlet the analysis of a play, even when accompanied with critical remarks, if such publication would clearly interfere with the

(*a*) Paris, 27th June, 1812, aff. St. Georges.
(*b*) Pouillet, § 466.
(*c*) *Ib.* § 533.
(*d*) Paris, 17th July, 1847, aff. Lecointe.
(*e*) Paris, 20th Feb., 1872, aff. Sarlit.

sale of the original work (*a*); (3) That it is piracy for a newspaper to give literally an analysis of all the chapters of a romance, even when accompanied by critical remarks, if it is clear that such reproduction will interfere with the sale of the original, by revealing the plan and most important details of the work (*b*); (4) That it is a piratical reproduction to publish and sell a faithful *résumé* of a play so as to injure its sale (*c*); (5) That it is piracy on the part of an author to give his work a title analogous to that of another work already published, when he follows the plan and borrows passages from it (*d*).

Dramatic and Musical Works.

Dramatic and musical copyright.

The publication of dramatic and musical works is regulated by the same laws as those relating to literary works.

Joint productions.

A work which consists of words and music by different authors is the joint property of the two, and cannot become public property until the rights of the heirs of each have expired: the unexpired rights of the heirs of one of the authors prolongs the existence of the rights of the heirs of the other author (*e*).

Taking plot of novel for drama.

It is lawful to appropriate the plot of a novel for the purposes of a drama, but the characters, situations, and episodes, must be changed (*f*). The turning of a drama into a novel is an infringement (*g*).

Registration and deposit.

Published dramatic works must be deposited like other literary works—and the same with regard to music with a text. In the case of music without words there is no law compelling deposit, but in practice it is generally made. The law of deposit is now regulated by the law of the 29th July, 1881: three copies are required (*h*).

Representation.

The exclusive right of representation of dramatic and musical works is by the law of 14th July, 1866, secured to the author for life, and to his heirs for fifty years after his death, exactly as in the publication of works of literature.

The right of representation is distinct from the right of publication, each being guaranteed by different enactments, the former by the law of 1791 and Art. 428 of the Penal Code,

(*a*) Nimes, 25th Feb., 1864, aff. Offray.
(*b*) Paris, 13th July, 1830, aff. Darthenay, Dall. 30, 2, 235.
(*c*) Paris, 12th March, 1845, aff. Durand.
(*d*) Cass. 26th Nov., 1853, Laurent de Villedenil, Roland de Villargues, Art. 425, Code Pénal.
(*e*) Paris, 27th June, 1866, Gérard.
(*f*) Paris 20th Feb., 1872, Delagrave.
(*g*) Seine, 23rd June, 1897, Heretiers de Dumas.
(*h*) See *ante*, p. 545.

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the latter by the law of 1793 and Art. 452 of the Penal Code.

Before being represented every dramatic work must be submitted to authorities for approval (*censure*).

All works intended for public performance are protected, as plays, operas, and musical compositions, whether vocal or instrumental, and dance music as well as other compositions.

The right of representation comprises as regards the author merely the right to authorize the representation of his work: the right of publication comprises the right of reproduction (*le droit de copie*) properly so called, the right to reproduce the work by copies (*exemplaires*) printed, engraved, or written by hand for circulation from one person to another. Hence it follows that the granting of one of these rights does not include the granting of the other. Therefore the director of a theatre authorized to *represent* a dramatic work cannot contend that he is invested with the *right of publication*, and, consequently, with the right of copying it for the purpose of representing it (*et par conséquent du droit de la copier pour l'exécuter*) (*a*).

Right of representation not lost by publication.

An author who publishes his dramatic work does not lose thereby the exclusive right of representation, as the law of July–August, 1791, provides that the works of living authors, whether engraved or printed or not, cannot be represented without their consent (*b*).

Musical works.

The publisher of the music of an opera is not impliedly authorized by his contract with the composer alone, to print the words with the music (*c*).

The grant of the right to publish a work does not give the grantee the right to represent or execute it. This question was raised in regard to barrel organs. A law has authorized the reproduction on these instruments and on gramophones and æolian organs of pieces of music which are still private property (*d*).

Piracy.

As regards French plays not yet public property, their plan, subject, characters, arrangement of scenes and action, are of capital importance, independently of style, language, and composition. It is therefore piracy to write a similar work, even in a foreign language, without the sanction of the author of the original, and any such imitation may be confiscated and the performance stopped.

The right which belongs to the author of a dramatic work

(*a*) Traité, Prop. litt. et art.; Pouillet, § 746.
(*b*) Prop. litt. V. Cappellemans: Bruxelles et Paris, 1854.
(*c*) Trib. Corr. de la Seine, 2nd August, 1826.
(*d*) Law of 16th May, 1866. See *ante*, p. 544

of preventing the representation of an imitation of his work in a foreign language, is distinct from and independent of the right to prosecute for piracy committed by printing. Consequently, loss by prescription of the right of action against the person committing piracy, does not involve loss of the right to forbid the representation of such work (*a*).

Adaptations.

The following cases have been decided as to adaptations: (1) That it is piracy to adapt a novel for the theatre without the consent of the author (*b*); (2) That the transformation of a dramatic work in prose into an opera is also an act of piracy (*c*); (3) That it is piracy to modify a theatrical piece, so as to adapt it for use as an opera libretto, if the plot and arrangement of the scenes (*la disposition des scènes et la marche générale de l'ouvrage*) have not been altered (*d*).

Piracy of an unpublished play.

This principle applies also to unpublished works, and it has been decided that it is piracy to take down by shorthand during representation an unpublished play, for the purpose of having it printed (*e*).

Right of representation independent of deposit.

Deposit is only necessary in cases of works printed or engraved, and when a piece has been printed or engraved without the formality of deposit, it does not follow that the author loses his right to control the representation. He can always prosecute those who in contravention of his rights represent his works, whether printed or engraved, although no deposit has taken place (*f*).

Combined effect of laws of 1791 and 1793.

The combined effect of the laws of 13th of January and 6th August, 1791–19th July and 1st September, 1793, is to guarantee to the authors of dramatic works the right of property in such works, and the right to dispose of them during their lives, either for the double purpose of publication by printing and representation, or separately for either of these purposes (*g*).

Penalties.

Every infringement of the right of public representation is punishable by confiscation of the gross receipts for the benefit of the author. This principle is established by the law of July–August, 1791, and Art. 428 of the Code Pénal (*h*).

(*a*) Code du Théâtre: C. Le Seune, Paris, 1878.
(*b*) Paris, 27th Jan., 1840, aff. de Musset; Dall. V. Prop. litt. No. 187.
(*c*) Paris, 6th Nov., 1841, aff. Victor Hugo.
(*d*) Paris, 30th Jan., 1865, aff. Scribe.
(*e*) Paris, 18th Feb., 1836, aff. Fréd. Lemaître, Dall. V. Prop. litt. No. 345.
(*f*) Code du Théâtre, &c.: C. Le Seune, Paris, 1878.
(*g*) Etude sur la Prop. des Œuvres posthumes: E. Collett & C. Le Seune, Paris, 1879.
(*h*) Code du Théâtre, Lois, Règlements, Usages, Jurisprudence, par C. Le Seune, Paris, 1878.

Artistic Copyright.

Artistic copyright.

The law of 19th July, 1793, puts "*les peintres et dessinateurs qui font graver des tableaux ou dessins*" on the same footing with "*les auteurs d'écrits en tout genre.*" In subsequent laws this equality has been maintained in the case of engravers, and the law of 11th March, 1902, has expressly brought architects and sculptors within the law and rendered any inquiry as to the merit or destination of their work unnecessary.

Duration.

The duration of copyright in works of art is for the life of the artist and fifty years after his death, exactly as in works of literature.

What protected.

Artists have a latitude which is not allowed to others. They may utilise the ideas and works of other people on condition that their work is not a servile reproduction, and that it possesses a certain amount of originality.

It is not lawful to reproduce for sale an engraving or picture which belongs to another, by sculpture, drawing, painting on porcelain, or by needlework, even though in the case of a picture the colours be omitted (*a*); but a partial copying may be lawful so long as the copyist does not do anthing to endanger the reputation of the artist (*b*). Fraudulent placing of a name upon paintings, sculptures, designs, and music is an offence dealt with by the law of 9th February, 1895.

Photographs.

Photographs, not being expressly dealt with by any legislation, have been a matter of controversy. Three theories are propounded—(a) that all photographs are protected under the law of 19th July, 1793; (b) that no photographs are protected: (c) that only photographs that have artistic merit are entitled to protection. The text writers generally prefer alternatives (a) or (b), but the decisions of the courts seem rather to favour the third alternative (*c*).

Works of art which have become public property may be photographed; but to photograph for sale any work of art in which copyright exists without the consent of the owner thereof is an act of piracy (*d*); and whilst it is, no doubt, lawful to take a general view of a street, the opinion has been expressed that, since the law of 7th March, 1902, an architect can prevent a photograph of a private building being taken for purposes of profit (*e*). Whether a sitter to a photographer can

(*a*) Fliniaux, l. c. p. 111.
(*b*) Paris, Cour d'Appel, 26th Nov., 1902, Trouillebert.
(*c*) Pouillet, § 100 *et seq.*
(*d*) Fliniaux, l. c. p. 112.
(*e*) 'Le Droit d'Auteur' (the official magazine of the Berne Convention), 1903, p. 70.

prevent publication of the photograph depends on the circumstances under which the portrait is taken.

Right of engraving.

The proprietor of a work of art has the sole right of engraving it.

Registration and deposit.

By the laws of the 19th July, 1793, and 9th January, 1828, engravings, lithographs, and other printed works of art had to be deposited at the national library; and those artists who omit this formality cannot prosecute any one for piracy (*a*). The deposit is now regulated by the law of the 29th July, 1881, and three copies must be deposited by the *printer* (*b*). On the other hand, no such formality is required in the case of works of art executed on wood, marble, metal, and ivory (*c*).

Penalties for piracy.

Piracy of works of art is punishable in the same manner as literary piracy, and the pirated work is liable to seizure and confiscation.

Rights of Foreigners in France.

Foreigner publishing in France.

France has always been exceedingly liberal to foreigners in the matter of copyright. Any foreigner who publishes a work in France, or causes a dramatic work to be represented in France, is by the French law put entirely on the same footing as a French author with respect to copyright.

The French law of domicile confers on an author very peculiar rights. Thus, a Frenchman may publish a work in England, and yet, some years afterwards, he, or his children, or their assigns, may have had the copyright of that work in France without the aid of any convention or treaty. The case of 'Clery's Journal' is an instance in point (*d*). Clery had published in London a work entitled 'Journal of what happened in the Tower of the Temple during the Captivity of Louis XVI., King of France.' In July 1814, the two daughters-in-law and heirs of Clery assigned to Chaumerot, a bookseller in Paris, the property in the 'Journal' of their father-in-law. In September he reprinted it, and made the ordinary declaration then required by the law of France. In June 1817, Michaud, another bookseller, published a work entitled 'History of the Captivity of Louis XVI., and of the Royal Family, as well at the Tower of the Temple, as at the Conciergerie,' in which work was inserted, entire, the 'Journal,' which was the property of Chaumerot. A proceeding for piracy was commenced by Chaumerot, and

(*a*) Paris, 6th June, 1861, Gilles.
(*b*) *Ante*, p. 545.
(*c*) Paris, 26th Feb., 1868, and Cass. 12th June, 1868, Mathias.
(*d*) Rénouard, Traité des Droits d'Auteurs (1839), Part IV., c. iii., s. 89, vol. ii. p. 205.

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by the judgment of the Court of Cassation he succeeded in his suit (*a*).

Foreigners publishing abroad.

A foreigner who publishes in a country with which France has no copyright convention is now protected by the decree of 28th March, 1852, but he can only sue for infringement if he complies with certain formalities. The decree of 28th March, 1852, is as follows:

Art. 1. Piracy on French territory of works published abroad and comprised in Article 425 of the Penal Code constitutes a misdemeanor (*délit*).

Art. 2. The same holds good with regard to the sale, export, and consignment of pirated works. The export and consignment of such works are offences of the same kind as the introduction into French territory of works which, after having been printed in France, have been pirated abroad.

Art. 3. The offences referred to by the preceding articles are punishable in accordance with Articles 427 and 429 of the Penal Code, and Article 463 (*b*) is also applicable.

Art. 4. Nevertheless, a prosecution can only take place under the conditions imposed with respect to works published in France, notably by Article 6 of the law of 19th July, 1793, which relates to the formalities of deposit (*c*).

At first sight, this decree seems to assimilate the rights of foreigners to those of citizens, but in the year 1857 the Court of Cassation decided that, no mention being made, in the decree, of Article 428 of the Code Pénal, foreigners cannot complain of the representation of their works (*d*), and the majority of modern text writers are of opinion that a foreigner cannot claim a longer or more extensive right of translation or reproduction than in the country of first publication, and that if treaties less favourable have been concluded between France and any nation, these treaties have the effect of excluding the decree of 28th March, 1852. These questions have, however, lost much of their practical importance by reason of the treaties and conventions to which France has become a party.

France, with Algeria and her colonies, was one of the signatories of the Berne Convention of 1886 and the Additional Act of 4th May, 1896. She has also acceded to the Convention of

(*a*) Merlin, Questions de Droit, Contrefaçon, s. vii.

(*b*) Art. 463 merely allows the reduction of penalties where there are extenuating circumstances.

(*c*) The deposit is now regulated by the law of the 29th July, 1881, *ante*, p. 515.

(*d*) Court of Cassation, 14th Dec., 1857, Verdi-Pataille, 58, 100; contra, Paulmier and Lacon, tom. ii., No. 677, pp. 234–236.

Montevideo, though her accession has so far only been accepted by the Argentine Republic (3rd March, 1896) and Paraguay (7th April, 1900), and America has proclaimed France as one of the countries entitled to the benefit of the Chace Act, 1891 (1st July, 1891). The following treaties are also now in force (*a*):

Austria-Hungary . .	11th December, 1866.
Bolivia	8th September, 1887.
Congo	18th November, 1899.
Costa Rica . . .	28th August, 1896.
Denmark . . .	6th November, 1858, and 5th May, 1866.
Ecuador . . .	9th May, 1898.
Germany . . .	19th April, 1883.
Guatemala . . .	21st August, 1895, and 16th May. 1899.
Italy	9th July, 1884.
Mexico	27th November, 1886.
Monaco	9th November, 1865.
Montenegro . . .	24th January, 1902.
Netherlands . . .	29th March, 1855, and 27th April, 1860.
Portugal . . .	11th July, 1866.
Roumania . . .	28th February, 1893.
Salvador . . .	9th June, 1880.
Spain	16th June, 1880.
Sweden and Norway .	30th December, 1881, and 15th February, 1884.

Designs.

Designs.

French law treats the registration of designs and models as a mere matter of custody. Any person who deposits a sealed packet in the prescribed form can assert ownership of the design or model for three or five years, or in perpetuity on payment of the fees chargeable. The contents of the packet are secret, known only to the depositor. There is thus no preliminary examination or discretion whatsoever with the registrar, who simply gives a receipt for a sealed packet containing certain designs or models relating to the manufacture specified of the depositor. There is no system of marking goods for the protection of the public, no system of searches or furnishing information, no complete record of expired designs, and in fact very little system at all. The designs and models registered in Paris used to be transferred after expiry of the time for which they were deposited to the Industrial Arts Museum (*Conservatoire des Arts et Métiers*), but this is no longer done. There is, therefore, not even an ultimate benefit to the public from granting provisional protection (*b*).

Artistic designs have been always protected by the law of

(*a*) The text of these treaties and all other copyright treaties may be found translated into French in a recent collection issued from the International Copyright Bureau at Berne (1904).

(*b*) Barclay, Law of France relating to Industrial Property, p. 11.

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the 19th July, 1793; but industrial designs did not fall under this law, but under the law of 18th March, 1806. It was not always easy to distinguish between an artistic and an industrial design, and the distinction seems to be now abolished by the law of 11th March, 1902, which now provides that designers are to be entitled to the protection conferred by the law of 19th July, 1793, "whatever may be the merit or destination of the work" (*a*).

BELGIUM.

Literary copyright in Belgium.

From 1791 to 1814 copyright in Belgium was the same as in France, the two countries being united during that time, and the French laws of that period continued in force until the passing of the law of 1886. From 1814 until 1830, Belgium was united with Holland, but the only laws passed during this latter interval affecting copyright, appear to be those of the 23rd September, 1814, and the 25th January, 1817. The first Belgian law on the subject was a decree of 21st October, 1830: a further law was passed on the 1st April, 1870.

Duration.

Until the law of 1886, to be mentioned hereafter, the law as to copyright was shortly as follows: Literary works were protected for the life of the author and twenty years after his death (Decree of 5th February 1810).

Piracy and penalties.

Piracy was defined and punished by Articles 425–429 of the French Penal Code of 1810: we have already given these articles in the section on French copyright (*b*). There seems to be no doubt that these articles, which were not repealed by the Belgian Penal Code of 1867, were until 1886 in force, and such is also the opinion of M. Nypels in his 'Commentaire du Code Pénal.'

Registration.

Three copies of every edition had to be deposited with the communal authorities at the locality where the author resided, signed by the printer and publisher, in order to secure protection (*c*).

What protected.

Only those works were entitled to protection which were printed and published in Belgium.

The heirs of an author had the copyright in his posthumous works on condition of not joining them to other works which had already become public property.

Assignment.

Copyright could be alienated in whole or in part by the author or his legal representatives.

(*a*) *Ante*, p. 539. (*b*) Page 542.
(*c*) The deposit is dispensed with by the new law.

With regard to publication of dramatic and musical works the rules were the same as for other literary works.

Dramatic and musical works.

With regard to the representation of dramatic works the exclusive right belonged to the author during his life, but it did not descend to any one except his issue, or failing them his widow; to these the right of representation was given for ten years. The performance of musical works was not protected.

Representation.

Artistic copyright.

The French law of 19th July, 1793, and the Dutch-Belgian law of 25th June, 1817, regulated artistic copyright.

The heirs and assigns of an artist enjoyed protection for twenty years against reproduction of his work by any process except sculpture. In the case of sculpture this protection only lasted for ten years.

The law has in recent years been modified by the law of 1886, the provisions of which are substantially as follows:

Part I. Of Copyright in General.

Copyright in general.

Art. 1. The author of a literary or artistic work has alone the right of reproducing it or of authorizing its reproduction in any manner and in any form whatsoever.

Duration.

Art. 2. This right is prolonged for fifty years after the death of the author for the benefit of his heirs or assigns.

Copyright personal property.

Art. 3. Copyright is personal property, transferable and transmissible, in whole or in part, in conformity with the rules of the Civil Code.

Posthumous work.

Art. 4. The owners of a posthumous work enjoy copyright for fifty years from the day of publication, representation, performance or exhibition.

An Order in Council shall determine in what manner the date from which the term of fifty years shall run, is to be ascertained (*a*).

Work in collaboration.

Art. 5. When the work is the result of collaboration, copyright exists for the benefit of all the persons entitled for fifty years from the death of the surviving contributor.

Art. 6. When there is joint copyright, the exercise of the right is subject to agreement. In default of agreement, no one of the co-owners can exercise it alone, the right of deciding in case of disagreement being reserved to the court.

Nevertheless each of the owners is free to prosecute in his own name and without the intervention of the others, any

(*a*) See Order in Council of the 27th March, 1886, and the ministerial decree of the 3rd April, 1886.

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infringement of the copyright, and to claim damages for his share.

The Courts are empowered at all times to impose such limits on a permission to publish the work as they shall judge useful to prescribe; they shall be able, on the request of an opposing co-owner, to determine that he shall not participate in either of the expenses or benefits of publication, or that the collaborator's name shall not appear on the work.

Anonymous work.

Art. 7. The publisher of an anonymous or pseudonymous work is considered, as regards third parties, to be the author.

As soon as the author discloses his identity, he regains full possession of his legal rights, *il reprend l'exercice de son droit.*

Limit to transferee's rights.

Art. 8. The transferee of copyright or of the object which (*materialise*) represents a work of literature, of music, or of the draughting arts cannot modify the work, for the purposes of sale or profit, nor publicly exhibit the work modified, without the consent of the author or his representatives.

Protection from seizure.

Art. 9. Literary or musical works are not at any time while unpublished, and other works of art, while they art not ready for sale or publication, are not during the life of the author, liable to seizure.

Part II. Of Copyright in Literary Works.

Extent of literary copyright.

Art. 10. Copyright is applicable not only to writings of every kind, but to lectures, sermons, addresses, speeches, or to any other verbal expressions of thought.

Nevertheless, speeches delivered in deliberative assemblies, in the public sittings of the courts, or in political meetings can be freely published; but the author alone has the right of printing them separately.

Public documents.

Art. 11. Official decrees or orders of the administration (*Les actes officiels de l'autorité*) are not the subject of copyright. All other publications made by the State or public administrative bodies are the subject of copyright, either for the benefit of the State or such public administrative bodies, during a period of fifty years from their date, or for the benefit of the author if he has not alienated his right in favour of the State or such administrative bodies.

An Order in Council is to determine the manner in which the date of publication is to be ascertained (*a*).

(*a*) See *post*, the Order in Council of the 27th March, 1886, and the ministerial decree of the 3rd of April, 1886.

Art. 12. Copyright in a literary work includes the right of making or authorizing the translation of it (*a*). Translations.

Art. 13. Copyright does not prevent the right of making quotations when used for purposes of criticism, argument, or instruction. Quotations.

Art. 14. Every newspaper may reproduce an article published in another newspaper on condition of indicating the source, unless the article bears a *special* warning that reproduction is forbidden (*b*). Newspaper articles.

Art. 15. The right of representation of literary works is regulated in conformity with the provisions relating to musical works (*c*). Right of representation.

Part III. Of Copyright in Musical Works.

Art. 16. No musical work can be *publicly* performed or represented, in whole or in part, without the consent of the author (*d*). Musical works.

Art. 17. Copyright in musical compositions includes the exclusive right of making arrangements on the motifs of the original composition.

Art. 18. In the case of works composed of words or libretti together with music, the composer and the author respectively shall not be able to bring out their work with a new collaborator. Nevertheless they shall have the right of independently turning it to account, by publications, translations, or public performances.

Part IV. On Copyright in Plastic Works.

Art. 19. The transfer of a work of art does not carry with it the transfer of the right of reproduction to the benefit of the purchaser. Plastic works.

Art. 20. Neither the author nor the owner of a portrait has the right to reproduce it or exhibit it publicly without the consent of the person portrayed or his representatives, during twenty years from his decease; with the said assent, the owner has the right of reproduction, but the copy must not bear an indication of an author's name.

(*a*) See the Convention of Berne, 1886, s. 5.

(*b*) This article is recognised as applying to telegrams of literary or scientific merit.

(*c*) This is said to aim at public readings.

(*d*) This provision is open to abuse, and there is some agitation for its repeal or modification. It has been held that the proprietor of a *café* chantant is liable for music played at his *café*. Gramophones and instruments of a like nature come within this article and are infringements of the author's rights.

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Art. 21. The reproduction of a work of art by manufacturing processes, or by processes applied to manufactures, remains nevertheless subject to the provisions of the law.

Part V. Of Piracy and its Repression.

Piracy and its repression.

Art. 22. Every wrongful or fraudulent infringement of copyright constitutes the offence of piracy.

Definition of offence.

Any one who shall knowingly sell, expose for sale, keep in his shop for the purpose of sale or introduce into Belgian territory for commercial purposes, pirated works is guilty of the same offence.

Fine.

Art. 23. Offences contemplated by the preceding article shall be punishable by a fine of 26 to 2500 francs.

Confiscation.

Confiscation of fraudulent works or objects, as well of plates, moulds, or matrices, and other implements which have *directly* served to commit this offence will be decreed against persons found guilty.

Art. 24. In the case of a performance or representation made in fraud of copyright, the receipts may be seized by the judicial police as the products of the offence, and shall be allotted to the claimant on account of the damages coming to him, but only in proportion to the part which his work shall have had in the performance or representation.

Art. 25. The wrongful or fraudulent application in a work of art, or on a musical or literary work, of the name of an author, or of any distinctive sign adopted by him to distinguish his work, shall be punishable by imprisonment from three months to two years, and by a fine of 100 to 2000 francs, or by one of these penalties alone (*a*).

Confiscation of the fraudulent articles shall be decreed in every case.

Any one who knowingly sells, exposes for sale, keeps in his shop, or introduces into Belgian territory, the articles specified in the first paragraph shall be punishable with the same penalties.

Art. 26. Violations of this law, except those provided for by Art. 25, can only be prosecuted on the complaint of a person asserting that he is injured.

Art. 27. If there are extenuating circumstances, the penalties of imprisonment and fine imposed by this present law, may be reduced in conformity with Article 85 of the Penal Code.

(*a*) This is new.

Art. 28. The following provision is added to No. 23 of the first article of the law of the 15th March, 1874, on extraditions: "Likewise for the offence provided against by Article 25 of the law of copyright."

Part VI. Civil Actions from Copyright (a).

Civil proceedings.

Art. 29. The rightful owners of copyright shall be able, with the authorization, to be obtained on petition, of the presiding judge of the Court of First Instance in the locality of the piracy, to have a description taken of the articles alleged to be fraudulent or of the acts of piracy, and of the implements which have directly been used to accomplish them, by one or several experts as this magistrate shall direct.

The presiding judge may by the same order forbid the holders of the fraudulent articles to part with them, may allow the appointment of a receiver (*gardien*), or even may put the articles under seal. This order shall be notified by an officer appointed for this purpose.

If it is a question of things which produce receipts, the presiding judge may authorize a protectionary seizure of the cash by an officer to whom he shall entrust this.

Art. 30. The petition shall contain *élection de domicile dans les communes* in which the description should take place.

The experts shall be put on oath in the presence of the presiding judge before they commence proceedings.

Art. 31. The presiding judge may impose on the plaintiff the obligation of depositing security. In this case the order will only be delivered on proof that the deposit has been made. A foreigner will always be ordered to give security.

Art. 32. The parties may be present at the description, if they are specially authorized by the presiding judge.

Art. 33. If doors are shut or there is a refusal to open them, proceedings must be taken in accordance with Article 527 of the Code of Civil Procedure.

Art. 34. A copy of the report of the description shall be sent by the experts in a registered letter with the least possible delay to the person on whom the seizure is made, and the person making the seizure.

Art. 35. If in the course of eight days from the date of the sending, to be ascertained by the postmark, or from the protectionary seizure of the receipts, a summons has not been

(*a*) Civil actions on copyright are governed by the provisions of the law of 1854 relating to patents.

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taken out before the court in whose jurisdiction the description has been made, the order shall entirely cease to be of effect and the holder of the articles described or the cash seized may claim to have the original report given up, and an injunction against any use or publication by the plaintiff of his copy, without prejudice to damages.

Art. 36. The consular jurisdiction has no cognizance of actions arising under this law.

The action shall be tried as a summary and urgent matter.

Art. 37. The receipts and the confiscated article may be allotted to the plaintiff on account of or to the amount of the damage sustained.

Part 7 provides for the Rights of Foreigners (*a*).

And Part 8 contains the Transitory Provisions as follows:—

Art. 39. The present law shall not affect agreements made on the subject under the regulations of previous laws. In the case of authors or their heirs whose rights arising under the previous laws shall be existing at the date of the promulgation of this law, their rights shall for the future be governed by this law. If before this promulgation they have ceded the whole of their rights, such rights shall remain subject to the laws in force at the date of transfer (*b*).

Art. 40. All previous provisions relating to copyright governed by this law are repealed.

In the opinion of Mr. Alcide Darras, this law, which closely follows the law of France, is the most finished example of legislation on copyright; yet it is curious that such a modern

Photographs.

piece of legislation contains no express provisions as to photographs. It is generally conceded that some photographs are entitled to protection, but not all; in fact, the law seems to have adopted the unfortunate system of laying upon the courts the burden of deciding in every case whether the particular photograph is "artistic," in which event alone it will be entitled to protection (*c*).

Posthumous works.

With reference to posthumous works a subsequent Order in Council, dated the 27th March, 1886, after stating that Article 4 of the Act of 1886 applied to literary and dramatic works, musical, and dramatic musical compositions, and to plastic works, gave notice that special registers were open at the Department of Agriculture, &c., for the registration of (a) posthumous literary, musical, or plastic works published, repre-

(*a*) See *post*, p. 566.

(*b*) The prolongation now given to copyright does not hold good where neither the author nor his heirs have any longer any right.

(*c*) The law of France on this point is similar, *ante*, p. 551.

sented, performed, or exhibited after the 5th April next, of which the proprietors or persons entitled should desire to obtain the benefit of Art. 4, (b) of publications made by the State or administrative bodies, the author's rights in which were reserved according to Art. 11 of the Act of 1886.

State publications.

Such registration must, under penalty of forfeiture, be applied for within six months of publication, representation, or performance in the case of a literary, dramatic, or musical work, or of exhibition in the case of a work belonging to the plastic arts.

Registration.

The persons interested shall receive a certificate of the registration applied for.

The forms of the registers, affidavits, and certificates are to be determined by the Department of Agriculture. Forms were appended to the order. Further forms were issued by the department on the 3rd April, 1886, and the same department issued a circular to the provincial governors on the 30th April, 1886, calling their attention to the principal points in the new law (*a*).

The Berne Convention was formally approved of and adopted by the Legislature of Belgium by a law dated the 30th September, 1887. The formal approval was followed by the issue of an explanatory circular to the governors of the provinces of the 28th November, 1887.

Works in existence previous to the Convention.

In order to give effect to the 14th section of the Berne Convention (*b*), which provides as to works published or in course of publication before the 5th December, 1887, the following council order was issued the 15th November, 1887.

Order in Council.

Art. 1. All publishers, printers or retail dealers selling articles protected by the International Convention are invited to make a list of all works published or in course of publication before the 5th December, 1886, taken from works published in any of the countries adhering to the Convention of which the future production would be prohibited according to the terms of the 14th section.

Inventories.

Art. 2. The exhibition and sale of these copies will be rendered lawful by the affixing of a special stamp to be provided by the Department of Agriculture and Trade.

Works in course of publication cannot be completed and put on the market, unless the parts which have appeared before the 5th December, 1887, are marked with the stamp in question.

Art. 3. Persons in possession of blocks and plates of every

(*a*) A letter on this law appears in 'Le Droit d'Auteur,' 1888, p. 78.
(*b*) *Ante*, pp. 470, 482.

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kind, as well as lithographing stones or other kinds of printing apparatus, of works originally published in any of the countries adhering to the Convention and constituting reproductions henceforth forbidden, are equally invited to supply lists.

Art. 4. The apparatus referred to may be used till the 5th December, 1889, after which date they must be stamped with a special mark (*estampille*).

Copies made before the 5th December, 1889, by means of apparatus bearing the mark (*estampille*), must be stamped to be lawfully put on the market. This stamp will only be applied up to the 1st January, 1890.

Art. 5. The interested parties shall certify the correctness of the list mentioned in Articles 1 and 2, which must be sent to the Department of Agriculture, Trade, and Public Works before the 5th of January next.

Art. 6. The lists must be made according to the forms annexed; after being properly filled in by the persons interested, they must be sent to the agents charged with the duty of stamping, who shall send them on to the department aforesaid with the additions of their signature and observations, if any are necessary.

Art. 7. The stamping mentioned in Articles 3 and 4 will take place from the 5th February to the 4th March, 1888. It will be done gratuitously.

Art. 8. After the 5th March, 1888, every unauthorized reprint of works originally published in one of the countries adhering to the Convention and not becoming public property, which shall be put in circulation for any commercial object, unstamped, shall be considered a piracy.

Art. 9. Every fraudulent reproduction or falsification of the stamps shall be subject to the penalties of the law.

Rights of Foreigners.

Without treaty.

Article 38 of the law of 1886 grants protection to foreigners, without any condition of reciprocity. Its provisions are as follows:

Foreigners enjoy in Belgium the rights secured by the present law, but their rights shall have no longer duration than the duration fixed by Belgian law. And if their rights cease earlier in their own country, they shall cease at the same moment in Belgium (*a*).

(*a*) This clause is objectionable in that it imposes on the Belgian tribunals the necessity of examining into foreign law.

Belgium is a party to the Berne Convention of 1886 (*a*), and has ratified the Additional Act and the Interpretative Declaration of 1896, and in the year 1903 acceded to the Montevideo Convention, though her accession has, so far, only been accepted by the Argentine Republic and the Republic of Paraguay (by decrees dated respectively 1st and 22nd June, 1903). The United States have proclaimed Belgium as a country entitled to the benefit of the Chace Act, 1891 (Proclamation 1st July, 1891), and she has treaties in force with the following countries (*b*):

Congo	20th December, 1898.
Germany	12th December, 1883.
Holland	30th August, 1858.
Mexico	7th June, 1895.
Portugal	11th October, 1866.
Spain	26th June, 1880.

HOLLAND.

Copyright in Holland.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of transmission to heirs or assigns for ever. Privileges were granted either by the Provincial Government or by the States General. These privileges however could be retracted as in the case of Rousseau in 1760, because "*le livre était impie, scandaleux, pernicieux et propre à démoraliser la jeunesse inexpérimentée de l'unique voie du salut.*" But this system was abolished under the influence of the French Revolution. The French laws put in force after the junction of Holland to that country were abrogated in 1814, and in 1817 a new code was enacted, which remained in force until the passing of the Act of the 28th of June, 1881, which had for its object the regulation of copyright and now constitutes the Dutch law on the subject. By the law of the 25th of January, 1817, literary copyright was limited to the author for his life, and to his heirs or representatives for twenty years after his death. The penalty inflicted for infringement of copyright was confiscation of all the unsold pirated copies in the kingdom; also a fine, equivalent in value to 2000 copies of the original edition, to the use of the proprietor; besides a fine of not more than 1000, nor less than 100 florins to be given to the poor of the district where the offender resided; and in case of a second offence, the offender was to be disabled from the exercise of his trade of printer or

(*a*) See Order in Council of 15th November, 1887 (*ante*, p. 565), as to works in existence before 1886.

(*b*) See note (*a*) *ante*, p. 557.

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bookseller, the whole without prejudice to the provisions and penalties imposed, or to be imposed, by the general laws respecting piratical printing (*a*). Both works of literature and art (except sculptures) were protected for the term mentioned in the above law.

Only such works were protected as were printed in the country, and the publisher must also reside there, but the name of a foreign publisher might be coupled with that of the native one.

The deposit of three copies with the communal authorities, and a declaration by a Dutch printer that the work had been printed by him, was necessary to secure protection. Dutch authors were protected against pirated works being imported from abroad.

Law of 1881.

A new law was passed on the 28th June, 1881. This law does not, however, apply to artistic works, as to which the law of 1817 is still in force. Rights of sculptors are entirely unprotected (*b*).

The text of the new law is as follows (*c*):

Part I. Character and Extent of Copyright.

The law of 1881.

Art. 1. The right of publishing in print writings, illustrations, maps, musical and dramatic works, and oral addresses, as well as the right of performing or of representing in public dramatico-musical and dramatic works belongs exclusively to the author and his assigns.

Every performance or representation, admission to which is obtained by payment, whether for one or more occasions, even where election is required in addition, is equivalent (*assimilée*) to a public performance or representation (*d*).

Art. 2. The following persons are equivalent to authors:

(*a*) Persons who bring out (*entreprennent*) any works mentioned in the first article when these works are made up of contributions from different collaborators.

(*b*) Public establishments, associations, foundations, and societies in matters which relate to works published under their direction.

(*c*) Translators in matters relating to their translation.

(*a*) Lowndes on Copyright, App. 121.

(*b*) 'Les Droits Intellectuelles,' par Alcide Darras, Paris, 1887, p. 349.

(*c*) The text given above is taken from the French translation of M. Pierre Dareste.

(*d*) This seems to meet the case of musical societies, which are numerous abroad.

In the case of works made up of contributions from different collaborators, each of these has in addition copyright in his contribution in the absence of any stipulation to the contrary.

Paragraph 2 of Art. 13 does not apply to the owners mentioned in (*a*) and (*b*) of this article.

Anonymous works.

Art. 3. In the case of works published in print, anonymously or pseudonymously, the publisher is considered the author, and if the name of the publisher does not appear on the title-page, or, if none, on the cover, the printer is so considered, until a third party makes himself known as the rightful owner in the manner prescribed in Arts. 10 and 11, except as to the period fixed by Art. 10 for the deposit.

Public documents.

Art. 4. There is no copyright in laws, decrees, orders and publications of every kind, whether verbal or written, of any public authority, except in cases to be determined by the king.

Translations.

Art. 5. Copyright includes the exclusive right of publishing in print translations of

(*a*) unpublished works, including oral addresses;

(*b*) published works, if this right is expressly reserved, for one or several languages designated on the title-page, or, if none, on the cover of the original edition, and if the author publishes his translation in print within three years from the original edition.

In the case of works made up of several parts or numbers, this period is to be calculated separately for each part or number.

Art. 6. When the same work is published at the same time in several languages, one edition alone is reckoned as original, and the others are considered to be translations.

The author has the right of indicating on the title-page, or if none, on the cover, the edition which he regards as original.

In default of indication, the edition in the mother tongue of the author is reckoned the original.

Quotations.

Art. 7. Copyright in works published in print does not prevent quotations being made from them for the purpose of announcing or criticizing them.

If the source be indicated, it is permissible to reproduce in print news and articles taken from the daily or weekly papers, unless an express reservation of the copyright is placed at the head of the news or article, and the formalities prescribed in Art. 10 have been fulfilled.

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Art. 8. Copyright in oral addresses does not prevent an account being given of debates in a public meeting.

Speeches.

Assignment and transmission.

Art. 9. Copyright is considered to be personal property. It is assignable in whole or in part and is transmissible by succession.

It is not liable to seizure.

Part II. Conditions of the exercise of Copyright in works published in print.

Registration.

Art. 10. Copyright in a work published in print is lost, unless the author, editor, or printer deposits at the Department of Justice, in the month of publication, two copies bearing his signature on the title-page, or if none, on the cover, with an indication of his address, and the date of publication. In the case of translations, the period fixed in Art. 5 (*b*) will be reckoned in addition.

With the deposit a declaration ought to be made, signed by the printer to the effect that the work has been printed in an establishment within the kingdom.

Art. 11. The Minister of Justice shall give to the depositors a dated certificate of the deposit.

A duplicate of the certificate shall be preserved at the Department of Justice and entered in a register which any person may inspect without payment and from which any person may require copies or extracts to be made at his own expense.

Notice is given every month in the *Nederlandsche Staatscourant* of the works and translations deposited.

Art. 12. The exclusive right of performing or representing dramatico-musical or dramatic works is lost when these works are published in print, unless this right is expressly reserved by the author on the title-page, or if none, on the cover of the original edition.

Duration for published works.

Art. 13. Copyright in works published in print lasts for fifty years from the original edition, reckoning from the date of the certificate of deposit mentioned in Art. 11.

When an author survives this period without assigning his right, he preserves it during his life.

For unpublished works.

Art. 14. Copyright in works not published in print, including oral addresses, lasts during the life of the author and thirty years after his death.

Musical and dramatic.

Art. 15. The exclusive right of performing or representing dramatico-musical and dramatic works lasts:

(1) In the case of works not published in print, for the life of the author and thirty years after his death.

(2) In the case of works published with a reservation of copyright for ten years from the date of the certificate mentioned in Art. 11.

Art. 16. The exclusive right of publishing translations in print lasts: Translations.

(1) In the case of works not published in print, including oral addresses, as long as the copyright.

(2) In the case of works published in print five years from the date of the certificate mentioned in Art. 11.

Art. 17. In the case of works made up of several parts or numbers, the duration of copyright is separately calculated for each part or number. Of works published in parts.

Part IV. Protection of Copyright.

Art. 18. Independently of the civil action flowing from any infringement of copyright, whoever knowingly infringes copyright will be punishable with a fine of 50 cents to 5000 florins. Protection of copyright.

Copies obtained by the committal of the offence, as well as plates, moulds, and matrices, belonging to the author of the offence and used in its committal, are confiscated for the benefit of the State.

Art. 19. Any one who distributes or puts publicly on sale a work which he knows to be pirated is punishable with a fine of 50 cents to 600 florins.

Pirated copies are confiscated for the benefit of the State.

Art. 20. The offences mentioned in Articles 18 and 19 are only prosecuted on the complaint of an injured person.

Art. 21. Copies confiscated under Articles 18 and 19 are delivered to the author or his assigns, if they claim them at the clerk's office within eight days after the judgment has become absolute.

In default of claim, these copies are destroyed. If the judge is called to give damages in a civil action, he shall take into account so far as possible the copies delivered to the claimant.

Art. 22. Authors or their assigns may effect seizure and demand the delivery or destruction of copies published in defiance of their exclusive right.

This seizure cannot be made on isolated copies in the hands

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of persons who do not trade in articles of this kind, and who have acquired those copies for their personal use.

Articles 722 to 726 of the Code of Civil Procedure are applicable to this seizure.

Art. 23. In the case of withdrawal of the seizure, the person making it may be condemned in costs and damages.

Part V. Transitory Provisions.

Transitory provisions.

Art. 24. The right of reproduction (*kopijrecht*) or any other right of the same nature, acquired under previous legislation is secured on condition that the owner in the year following the coming into force of the law, makes a declaration on the subject at the Department of Justice.

Articles 18 to 23 of this law shall apply to this right.

Art. 25. No copyright, which would not have constituted a right of reproduction under the previous legislation or in respect of which the formalities then required should not have been regularly observed, shall be exercised over any works published in print before the coming into force of this law, unless the author, publisher, or printer deposits at the Department of Justice, in the year following the coming into force of this law, two copies bearing his signature on the title-page or if none on the cover, with an indication of his address and the date of original publication.

This date shall determine the commencement of the duration of the copyright, until there is proof to the contrary.

The copyright treated of in this article cannot be pleaded against works already commenced or completed before the coming into force of this law, and at this time lawful.

Art. 26. The Department of Justice shall deliver a dated certificate of deposit to the depositors mentioned in Articles 24 and 25.

A duplicate of these certificates shall be preserved at the Department of Justice, and entered in a register, which any person may inspect without payment, and from which any person may require copies or extracts to be made at his own expense.

Notice is given every month in the *Nederlandsche Staats-courant* of the declarations and works deposited, with mention of the date of original publication indicated by the depositor.

Part VI. Final Provisions.

Extent of application of law.

This law is applicable to works published in print in Holland or the Dutch Indies, and to unpublished works of authors domiciled in Holland or the Dutch Indies, including oral addresses delivered in Holland or the Dutch Indies.

Art. 28. The law is also in force (*verkrijgt*) in the Dutch Indies.

Works published in the Indies. Definition.

Works published in the Indies must be deposited with the Director of Justice, who shall see that notice of them shall be given in the *Javasche courant*, and on whom shall rest the duties imposed by this law on the Department of Justice.

The *Nederlandsche Staatscourant* and the *Javasche courant* shall mutually interchange these notices as quickly as possible.

In cases provided for by Art. 22, there shall be applied in the Dutch Indies provisions corresponding to the regulations in force there, taking into consideration the difference which exists between legislation for Europeans and their like, and natives and persons like natives.

No copyright shall be exercised over a work published in the Dutch Indies, except on condition that the directions of Art. 25 have been observed in matters concerning the work.

Art. 29. All previous provisions of the legislature relating to the right of reproduction, translation, performance, and representation are repealed.

Art. 30. This law shall come into force on the 1st of January, 1882.

Rights of Foreigners.

Without treaty.

The above law of 1881 does not follow other countries in their aim of international protection. By virtue of Art. 27 the Act only applies to works printed in Holland and the Dutch East Indies (though they need not be published in those places), and conformably to Art. 10, the author's copyright will be lost unless the author, editor, or printer deposits at the Department of Justice in the month of publication two copies of the work as therein provided.

Under treaty.

Holland has, up to the present time, held aloof from the Berne Convention. By a proclamation of 20th November, 1899, the United States have declared her entitled to the benefits of the Chace Act, 1891, but American authors have, in order to obtain Dutch copyright, to comply with similar

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conditions as to printing to those their laws impose on foreigners seeking copyright in America.

The only copyright treaties that Holland has are with Belgium and France, the former dated 30th June, 1858, and the latter originally concluded in 1855, perfected in 1860, and restored 19th April, 1884. A treaty with Germany was signed in 1884, but though ratified by the German Reichstag was never ratified by the Dutch Chambers, and Germany has just cause of complaint of the number of German works pirated in Holland.

THE GRAND DUCHY OF LUXEMBOURG.

Copyright before 1898.

From the date of the French Revolution to 1817, the Duchy of Luxembourg was subject to French laws. These were replaced or modified by the Dutch law of the 25th January, 1817 (*a*), and by various decrees of the Grand Duke made in execution of resolutions of the Germanic Diet. Under these laws the copyright in literary and artistic works lasted for the life of the author and thirty years after, and for life and ten years in the case of musical and dramatic works.

Law of 1898.

The legislation on the subject was defective and confused when in 1888 the government of Luxembourg was authorized to join the Berne Convention. After her adhesion to the Convention the necessity for a revision of her legislation became more pressing, and in the year 1898 a new law was passed which repealed all previous laws on the subject. This new law of 1898 is in fact a textual reproduction, with certain modifications, of the Belgian law which we have already set out and to which we would refer the reader (*b*).

The Luxembourg Copyright Law differs from the Belgian law in the following particulars only:

Definition of literary and artistic works.

Article 1, after enacting, as in the Belgian law, that the author of a literary or artistic work has alone the right of reproducing it or authorizing its reproduction in any manner and in any form whatsoever, defines "literary and artistic works" as "books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; works of architecture; photo-

(*a*) See the law of Holland.
(*b*) See *ante*, p. 559.

graphic works, and other works produced by a like process; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction" (*a*).

Anonymous works.

Article 7, relating to anonymous works, has the following addition: "If the true name of the author be disclosed by the author, or his duly authorised representatives, the period of protection shall be calculated by the life of the author."

Translations.

Article 12, relating to translations, is much more elaborate than the corresponding article in the Belgian law, and is as follows: "Authors and their assigns enjoy the exclusive right of making or authorizing the translation of their works during the whole period of their copyright in the original work. Nevertheless, the exclusive right of translation shall be lost if the author neglect for a period of ten years from the publication of the original work to publish or cause to be published a translation into the language in respect of which protection shall be claimed.

"For works published in incomplete parts (*livraisons*) the period of ten years commences from the date of the publication of the last part of the original work.

"For works composed of many volumes published at intervals as well as for bulletins or collections (*cahiers*) published by literary or scientific societies or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

"In the cases provided for by this present article for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication" (*b*).

Newspapers.

Article 14, as to newspapers, differs from article 14 of the Belgian law, and is as follows: "Serial stories, including novels, published in the newspapers or periodicals, may not be reproduced in original or translation without the sanction of the authors or their lawful representatives. This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or publishers shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited. In the case of periodicals, it shall suffice if such prohibition be indicated in general terms at the beginning of each number.

(*a*) This definition is identical with Article 4 of the Berne Convention with the addition of the words as to architecture and photography.

(*b*) This substantially reproduces Article 5 of the Berne Convention.

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In the absence of prohibition such articles may be reproduced on condition that the source is acknowledged. Articles of political discussion, news of the day, miscellaneous information, *and copies from literary or artistic works for publications intended for instruction, or having a scientific character, or for chrestomathies,* may be freely published" (*a*).

Musical works.

Article 16, relating to musical works, has the following addition: "The right of the author or his lawful representatives applies to the public performance of unpublished musical works as well as to published works, the public performance whereof has been expressly prohibited by the author on the title-page or head of the work."

Article 26 is new, and makes it an offence to add, erase, or alter the name upon manufactured articles.

Rights of Foreigners.

Without treaty.

Luxembourg grants more liberal protection to foreigners than any other country of the Copyright Union. Like France and Belgium, she does not require that a work shall be nationalized by publication within her borders, but, whilst France exacts compliance with certain formalities, and Belgium subordinates protection in that country to the existence of protection in the country of origin of the work, the protection accorded to the foreigner in Luxembourg is complete—it is that which native authors enjoy without limitation of any sort, except in the matter of length of protection (*b*).

Article 39 of the Law of 1896 is as follows:

"Foreigners enjoy in the Grand Duchy the rights guaranteed by the present law, but the period of protection cannot exceed the period fixed for the work in question by the law of Luxembourg."

Under treaty.

Luxembourg became a party to the Berne Convention on the 20th June, 1888, and she has accepted the Additional Act of Paris with the Interpretative Clause, but has no other treaty engagements.

THE GERMAN EMPIRE.

Recent copyright laws in Germany.

Copyright in the German Empire is in process of alteration and amendment. A recent law of 19th June, 1901, which came into force on the 1st January, 1902, and is retrospective

(*a*) This is Article 7 of the Berne Convention, as revised by the Additional Act of Paris, with the addition of the words in italics.
(*b*) 'Le Droit d'Auteur' (1902), p. 17.

in its operation, has codified the law relating to literary and musical works, replacing the earlier law of 11th June, 1870, and new laws on the subject of artistic works and photographs are expected shortly—or possibly a codification of the whole of the copyright laws. At the moment of writing, copyright in works of literature and music is governed by the law of the 19th June, 1901, in works of art by the law of 9th January, 1876, and in photographs by the law of 10th January, 1876. There is also a law protecting industrial designs and models dated the 11th January, 1876.

Law of 19th June, 1901, as to literary and musical works.

The law of 19th June, 1901 is very elaborate, and entitles to protection (1) authors of writings, lectures, and discourses, whether intended for edification, instruction, or amusement; (2) authors of musical works; (3) authors of scientific or technical illustrations, including plastic works, which, by reason of their object, cannot be considered works of art. (Art. 3.)

Anonymous works.

In the case of anonymous or pseudonymous works, the publishers are, in the absence of stipulation to the contrary, to be reputed the authors. (Art. 3.)

Encyclopædias and collaborations.

In the case of encyclopædias and works of a similar character the proprietor (*Herausgeber*) or, if he be not named, the publisher (*Verleger*) is deemed the author of the entire work (Art. 4); but collaborations, when the work of the individuals cannot be distinguished, are the property of the collaborators jointly. (Art. 6.)

When a writing is accompanied by a musical setting or illustrations, the author of each of these creations is a distinct author. (Art. 5).

Assignment.

Copyright passes to the author's heirs and may be freely assigned (Art. 8), but, in the absence of stipulation to the contrary, the assignee has no right to alter or modify the work, its title, or the name of the author (Art. 9), and the author reserves the exclusive liberty (a) of translation; (b) of reproducing a recitation in dramatic form or a scenic work by recitation; (c) of arranging a musical work, unless the arrangement consists only in making an extract or a transposition into another key or register. (Art. 14.) Copyright is not liable to execution without the author's consent. (Art. 10.)

Period of protection.

The period of copyright granted by this law is thirty years from the author's death, or for not less than ten years from the date of publication. When the publication does not take place until thirty years after the author's death, there is a presumption that the copyright has passed to the owner of the MS. (Art. 29.) In the case of collaborations, the period is

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reckoned from the death of the last survivor. (Art. 30.) Anonymous and pseudonymous works are protected for thirty years from publication, but within that period the true name of the author may be revealed, and he will then become entitled to the full period of protection. (Art. 31.) So where copyright belongs to a *personne juridique*, thirty years is the period of protection. (Art. 32.)

In the case of books published in volumes at intervals, each part is considered a separate book; in the case of works published in parts, the period of protection dates from the publication of the last part. (Art. 33.)

Rights of author.

During the above period the author enjoys the exclusive liberty of reproducing and multiplying copies of his work in the course of trade; and so long as the essential contents of the work have not been made public the author has the sole right of making this communication. In the case of a scenic or musical work the author's rights include the exclusive right of public representation and performance; and as long as a writing or speech is unpublished, the author has the exclusive right of recitation. (Art. 11.)

The exclusive rights given by Art. 11 apply equally to adaptations of the work. In particular the author has the sole right (a) of translation, including transposition into verse; (b) of re-translation into the original language; (c) of reproducing a recitation in a dramatic form or a scenic work in the form of a recitation; (d) of making extracts from musical works and of arranging for orchestra or in parts. (Art. 12.)

What is piracy.

Any unauthorised reproduction is unlawful, whatever be the process employed, and it makes no difference whether a single copy or several copies be made; but single copies may be made for personal use only. (Art. 15.) Statutes and official documents may be reproduced (Art. 16), and, subject to the rights conferred on the author by Art. 11, a work may be freely used if a new work is produced. Nevertheless, the borrowing of a melody from a musical work in such a manner as to be recognizable, even though it serves as the basis of a new work, is expressly forbidden. (Art. 13.)

Not piracies.

The following are not piracies: (a) the reproduction in newspapers or reviews of speeches or discourses delivered in public deliberations; (b) reproduction of speeches or discourses delivered in the courts, or at representative, political, and ecclesiastical gatherings. But speeches may not be reproduced in a collection containing mainly the speeches of one speaker. (Art. 17.)

Isolated articles in newspapers may be reproduced, unless the copyright is expressly reserved; but the source must be acknowledged and the sense not altered; but special articles of a scientific, technical, or amusing character may not be reproduced even if no mention is made of reservation of rights. News may be freely reproduced. (Art. 18.)

The following are not infringements of the copyright in literary works (but the source must be acknowledged, Art. 25):

1. Citation of passages or small portions of a writing, speech, or discourse, after publication, in an independent literary work.
2. Reproduction of isolated articles of short length, or isolated pieces of poetry, after their publication, in an independent scientific work:
3. Reproduction of isolated pieces of poetry, already published, in a collection comprising works of various authors intended for musical execution.
4. Reproduction of isolated articles of short length, isolated pieces of poetry or small portions of a writing, in a collection comprising various authors, intended for a work of an instructive, scholastic, or literary character. In this case, however, the consent of the author must be obtained, but such consent is to be deemed to be given if not refused within a month. (Article 19.)
5. Reproduction of small parts of a poem, or pieces of poetry of short length, after their publication, as the libretto of a new musical work and in connection with it, provided the poems are not, by their nature, intended to be set to music. (Art. 20.)
6. Taking isolated illustrations from a published work to explain the text. (Art. 23.)

The following are not infringements of the copyright in musical works (but the source must be acknowledged, Art. 25):

1. Citation of passages from a musical work, in an independent literary work.
2. The insertion of published compositions of short length in an independent scientific work.
3. Reproduction of published compositions of short length in a collection comprising the works of various composers and intended for instruction in schools, other than schools of music. (Art. 21.)
4. Reproduction of airs by mechanical instruments, unless

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skill is needed to produce superior effect (*a*). (Art. 22).

The rights of reproduction above permitted of literary and musical works of another without the consent of the proprietor of the copyright include the liberty of multiplying, representing, performing, and reciting in public (Art. 26); but the person who reproduces the works of another under the provisions of Articles 19 to 23, must not make any modification in the parts reproduced, except that, where necessary for the object of the reproduction, a literary passage may be translated or a musical work arranged with the consent of the author. (Art. 24.)

Where the proprietors of the copyright are numerous, the consent of each one is necessary, except that in the case of an opera or musical work with libretto, the consent of the proprietor of the copyright in the music alone shall be necessary. (Art. 28.)

Remedies.

Articles 34–53 relate to the remedies of the proprietor of copyright. It may be said, generally, that a person who infringes the author's rights intentionally or negligently is liable to indemnify the author, and if he does so intentionally he is liable to a fine and to imprisonment if the fine cannot be recovered. Infringing copies and plant may be ordered to be destroyed or delivered to the plaintiff even though there be no negligence or culpable intention on the part of the defendant.

Limitation of actions.

Proceedings for damages or penalties must be taken within three years, but the destruction of infringing copies or plant may be ordered at any time.

Registration.

No registration is compulsory under this law. By Art. 7 it is provided that there shall be a presumption that the person named in the title-page, the dedication, the preface, or the last page as the author, is the real author; but in the case of anonymous and pseudonymous publications, the real author can register his true name in a register kept at Leipsic, where-

(*a*) The clause in full is as follows: "It is lawful to copy a published musical work upon discs, plates, cylinders, bands, and other like parts of instruments serving to reproduce musical airs mechanically. This provision applies equally to interchangeable parts unless they apply to instruments by which the work can be reproduced in the matter of force and length of sounds and in the matter of measure in a manner equivalent to personal execution." The effect seems to be that perforated rolls for pianolas, aeolians, &c., will be infringements of copyright, but that musical boxes and gramophones will not. Under the old law the German courts held that the test of piracy was whether the disc rolls were inseparable parts of the mechanical instruments or whether the instruments were mechanically complete without them. According to the German decisions perforated rolls for aeolians are not "instruments for the mechanical reproduction of musical airs," which by Art. 3 of the Final Protocol of the Berne Convention are not to be considered as constituting an infringement of musical copyright.

upon he will become entitled to the full period of protection. (Art. 31.)

Authors and publishers.

It should be here mentioned that Germany has made an experiment in legislation by attempting to regulate the mutual rights of authors and publishers of literary and musical works by law. The law in question is the law of 19th June, 1901. This law is too lengthy and elaborate to be here set out, but it may be noted that by the terms of this law an author who has agreed with a publisher that the latter shall publish his work may not, during the pendency of the contract, reproduce his work in a manner prohibited to third parties, but the law reserves to him the right of translation, dramatization, and of arrangement of musical works. The author may also reproduce the particular work, after twenty years from its first publication, in a complete edition of his works. In the absence of agreement to the contrary, the publisher has only the right to make one edition, and unless a different number be named, an edition consists of 1000 copies (*a*).

Artistic copyright.

The law of the 9th January, 1876, concerns copyright in works of art. It is retrospective in its effect, and repeals all previous legislation on the subject. It took effect from 1st July, 1876, and its chief provisions are as follows:

What is protected.

Arts. 3 *and* 14. It is not applicable to architecture, nor does it protect an artist who permits his works to be imitated in the productions of manufacturing and similar industries. His copyright in such manufactured articles is protected by the law of 11th January, 1876, given below (*b*).

Persons protected.

Arts. 1 *and* 2. The right to reproduce a work of art in whole or in part belongs exclusively to the artist, and passes to his heirs, unless alienated previously; but does not pass to the Treasury or other authorities empowered to administer estates to which there are no heirs.

Art. 7. Any one imitating a work of art with due authorization, but by a different art process, enjoys the same protection for his imitation as an original artist, even though the original be already public property (*c*).

Duration.

Art. 9. Copyright given by this law lasts for the life of the author and thirty years after his death. This protection is subject to the condition that the author's true name appears in full or by some unmistakable sign on the work.

(*a*) Legislation on the subject of publishing agreements is not unique, but the German law is the most modern instance of its kind. (*b*) See *post*, p. 584.

(*c*) Gesetz betreffend das Urheberrecht an Werken der bildenden Künste, vom 9. Januar 1876. ('Reichs Gesetz Blatt,' No. 2.) Art. 7 is said to be especially intended to apply to engravings.

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Anonymous and pseudonymous works are protected for thirty years from publication. If within this period the author's real name shall have been registered by the author or his authorized representatives in accordance with Art. 39 of the law of 11th June, 1870 (*a*), the work is protected for the full period of life and thirty years after.

Art. 10. When artistic works are published in volumes or parts, at intervals, the commencement of the period of protection of each part is the same as in the case of works of literature.

Art. 11. Posthumous works are protected for thirty years from the death of the author.

Art. 12. Works of art appearing in periodicals, can after the lapse of two years from publication, unless there be a stipulation to the contrary, be reproduced elsewhere without the consent of the editor or publisher of such periodical.

Alienation.

Art. 2. An artist may alienate his copyright by contract or by will.

Art. 8. If an artist alienate his work, the alienation of his copyright is not necessarily included; but in the case of portraits and busts, the copyright belongs to those who order them.

The owner of a work of art is not bound to place it at the disposal of the artist for reproduction.

Piracy.

Art. 5. Every reproduction for purposes of sale of a work of art without the consent of the person entitled to the copyright is forbidden.

What acts piratical.

The following acts are considered piractical:

(*a*) Obtaining the reproduction by a different process from that by which the original was produced.

(*b*) Indirect reproduction not from the original work but from a copy of it.

(*c*) The reproduction of a work of art in a work of architecture, industry, or manufacture.

(*d*) Reproduction by either author or publisher contrary to the contract between them.

(*e*) Production by the publisher of a greater number of copies than he has a right to publish either by law or by contract.

Art. 6. It is not considered piracy:

Exceptions.

(*a*) To copy by hand a work of art if the copy is not intended for sale, but it is forbidden to introduce in any way on the copy the name or monogram of the

(*a*) Though this law has been repealed by the Copyright Law of 19th June, 1901, its provisions are kept in force so far as they are applicable to the Law of 9th Jan., 1876. The register is kept at Leipsic.

artist of the work under penalty of a maximum fine of 500 marks.

(*b*) To reproduce by the plastic art a painting or a drawing and *vice versâ*.

(*c*) To reproduce works of art which are permanently exposed to view in the streets and public places (*a*). But such reproduction must not be in the same form (*in derselben Kunstform*).

(*d*) The reproduction of a work of art in a work of literature, provided such reproduction be subsidiary to and serves only to illustrate the text. But the source must be acknowledged under penalty of a maximum fine of sixty marks.

Remedies and penalties.

The remedies of the artist and penalties for infringement are in corresponding cases similar to those in literary copyright.

Copyright in photographs.

The law of 10th January, 1876 (*b*), relates to the protection of photographs against unauthorized reproduction; it came into force on the 1st July, 1876. It is not retrospective, but existing photographs, which up to this date were locally protected by law, continue to enjoy such protection.

What protected.

The provisions of this law apply to works produced by any process analogous to photography (*durch ein der Photographie ähnliches Verfahren*), but do not apply to photographs of works protected by law against unauthorized reproduction.

Any copy of a photograph produced by drawing, painting, or sculpture, is protected by the law relating to art copyright (Art. 7) of 9th January, 1876.

Duration.

Art. 1. The right to reproduce a photograph in whole or in part by mechanical means (*c*) belongs exclusively to the photographer, and passes to his heirs.

Art. 6. By this law photographs are protected against reproduction for five years. This period commences to run from the end of the year in which the first impressions from the original photograph appeared, and if no impressions are taken, then from the date of making such original photograph. In the case of photographs published in volumes, the beginning of the period of protection is determined in the same manner as in works of literature and art.

(*a*) We are not aware of any German decision as to the meaning of a "public place," but the Swiss decisions cited in the note to a similar clause in the Swiss Copyright Law, *post*, may be usefully referred to.

(*b*) Gesetz betreffend den Schutz der Photographien gegen unbefugte Nachbildung, vom 10. Januar 1876. ('Reichs Gesetz Blatt,' No. 2.)

(*c*) Reproduction by other than mechanical process, *e.g.*, by painting or engraving, is not forbidden.

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Art. 5. Every lawful photographic or other mechanical reproduction of an original photograph must bear, either on the picture itself or the mounting, (1) the name or firm of the photographer or publisher; (2) his address; and (3) the year in which such reproduction first appeared.

Unless these conditions are complied with, no protection is afforded.

Alienation of copyright.

Art. 7. The producer of a photograph or his heirs can alienate his copyright, either by contract or by will, in whole or in part. But in the case of portraits the copyright vests in the person ordering them.

Piracy.

Art. 2. It is not piracy to make free use of a photograph to originate a new work.

Art. 3. The mechanical reproduction of a photograph without the consent of the owner of the copyright, with a view to its public circulation (*in der Absicht dieselbe zu verbreiten*) is forbidden.

Art. 4. It is not piracy to copy a photograph for use in a work of industry, handicraft, or manufacture (*a*).

Remedies. Penalties.

The remedies and penalties are similar to those in the case of literary copyright, and the law applies equally to works produced by processes analogous to photography.

Copyright in industrial designs and models.

The law of 11th January, 1876 (*b*), relates to copyright in industrial designs and models. It came into force on 1st April, 1876, and is not retrospective.

What protected.

Designs and models within the meaning of this law are only such as are of a new and original character. (Art. 1.)

Who protected.

The right to reproduce an industrial design or model belongs exclusively to the author of the same. (Art. 1.)

The proprietor of an industrial establishment in which designs and models are produced by persons in his employ is to be regarded as the author of such designs and models. (Art. 2.)

The right of the author passes to his heirs. It can be alienated either in whole or in part, and either by act *inter vivos* or by will. (Art. 3.)

Duration.

The protection of this law against reproduction of industrial designs and models is given to the author for a period which lasts from one to three years, according to his wish, from the date of registration. On payment of a fixed sum this period may be extended to fifteen years as a maximum, and such extension must be registered. (Art. 8.)

(*a*) Picture postcards escape under this article, being works of manufacture.
(*b*) Gesetz betreffend das Urheberrecht an Mustern und Modellen.

Registration.

All designs and models in order to obtain protection must be registered, and a duplicate or copy deposited with the registrar, and such registration and deposit must take place before any goods manufactured from such designs or models have been circulated. The person registering a design is not obliged to prove beforehand his claim to be considered the author. The register is open to public inspection, and certified extracts can be obtained. A person who has registered a design or model is considered the author until the contrary is proved. (Art. 9.)

Piracy.

It is not piracy (*Nachbildung*) to make free use of different parts of a design or model for the production of a new design or model. (Art. 4.)

Every reproduction without the consent of the author of a design or model made with a view to its circulation is forbidden; as also (i) when such reproduction takes place by a different process from that by which the original was produced, or when it is intended to be used in a different branch of industry; (ii) when it differs from the original in size and colour only, or can only be distinguished from the original by close observation; and (iii) when it has been reproduced indirectly from a copy of the original instead of from the original itself. (Art. 5.)

What is not piracy.

It is not piracy (*verbotene Nachbildung*) (i) to make single copies of designs or models without the intention to use them for industrial purposes, or to derive profit from them; (ii) to reproduce a surface design in the form of a plastic one, and *vice versâ*; (iii) to incorporate reproductions of designs and models in a work of literature. (Art. 6.)

Protection of trade name.

By the law of 27th May, 1896 (Art. 8), it is provided that if any one uses the name or designation of a fabric associated with any particular manufacturer with the object of causing confusion he shall be liable to an action for an injunction and damages.

By Article 8 of a law of 27th May, 1896, it is provided that if any one, in the course of business, makes use of a name, firm, or particular description of an article, concern, or print with the object of causing confusion with the name, firm, or particular description lawfully employed by third persons, and in a manner likely to attain this object, he shall be liable in damages and to an injunction at the suit of the injured party (*a*).

(*a*) Under this law the well-known title "Struwwelpeter" has been protected from infringement. Cour Supreme de Frankfort, 26th March, 1902.

Rights of Foreigners.

Literary and musical works.

Germany is not so liberal to foreigners as some other countries with recent legislation on the subject of copyright. Article 55 of the law of 19th July, 1901, provides that persons not resident in the Empire shall enjoy the benefits of that law only on condition that neither their works, nor a translation thereof, have been published previously abroad. Under like conditions foreigners are to enjoy protection for any work of which they publish a translation in Germany. Such a translation is deemed an original work. A work published simultaneously in Germany and abroad will, therefore, receive protection, and if a translation be published first in Germany it will be treated as an original work and not a translation, though the edition published simultaneously, or later, abroad may be the original edition.

Artistic works.

The law of 9th January, 1876, as to copyright in artistic works protects the works of foreigners provided they are issued by publishers whose place of business is in Germany.

Photographs.

Photographs are only protected if they are made by Germans (*a*).

Treaties, &c.

Germany was one of the signatories of the Berne Convention in 1886. She has also adhered to the Additional Act of Paris, 1896, and the Interpretative Declaration.

Germany does not fulfil the necessary conditions to entitle her to the benefit of the United States Chace Act, but a treaty was concluded between the two countries on the 15th January, 1892, and ratified 15th April, 1892.

Under this treaty citizens of the United States enjoy in the German Empire the protection of copyright in works of literature and art, as well as in photographs, against infringement on the same legal basis as that on which the subjects of the German Empire stand.

In return the government of the United States engaged that the President should make the proclamations provided for by the law of Congress of the 3rd March, 1891, with a view to extending the provisions of that law to German subjects, as soon as the Secretary of State should receive the official communication of the sanction of this Convention by the legislative authority of the German Empire (*b*).

(*a*) The treaty with America, however, provides for the protection of American photographs.

(*b*) We have not been able to discover that this proclamation has ever in fact been made, but undoubtedly German works are protected in America. The treaty causes a great deal of dissatisfaction in Germany.

Germany has also treaties with the following countries:

Austria	30th December, 1899.
Belgium	12th December, 1883.
France	19th April, 1883.
Italy	21st June, 1884.

The treaty with France contains a "most favoured nation clause." France has recently taken advantage of this to claim to be allowed full rights of translation. Under her particular treaty authors only enjoyed these rights for ten years after publication, but inasmuch as the law of 19th June, 1901, has conferred on citizens rights of translation for the full term of copyright, and by the treaty with America above referred to citizens of that country are placed on the same basis as German subjects, France has obtained similar rights by virtue of her most favoured nation clause. The treaties with Belgium and Italy also contain most favoured nation clauses, but only on condition of reciprocity.

AUSTRIA AND HUNGARY.

Austria and Hungary possess distinct laws.

The laws relating to copyright are different in Austria and Hungary. Austria is governed by a law of the 26th December, 1895; Hungary by one passed on the 26th April, 1884. Since 1887 a treaty has existed on these matters between the two countries, by which authors of works of literature or art and their successors, including their publishers, reciprocally enjoy, in each of the two States, the advantages which are granted therein for the protection of works of literature or art (*a*).

Earlier copyright laws.

Previously to the passing of the law of 26th December, 1895, copyright in Austria was governed by a law of 19th October, 1846, which gave a period of life and thirty years for literary and artistic works, and life and ten years for musical and dramatic works. On the 26th April, 1893, a transitory law was passed extending the term for the last-named works to life and thirty years, the cause of this temporary legislation being that the works of Wagner, who died in 1883, were on the point of falling into the public domain. The law of 26th December, 1895, which is retrospective in its operation (Art. 65), grants a similar period of protection to all works of literature, pictorial art, and photography.

(*a*) Treaty dated 10th May, 1887. The treaty extends to photographs. 'Droit d'Auteur,' 1897. p. 40.

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The following are the principal provisions of the law of 26th December, 1895 (*a*):

Law of 26th Dec., 1895.

Protection is granted to works of literature, art, and photography published in Austria. (Art. 1.)

Copyright extends to the whole and every part of a work. (Art. 3.)

Definition of works of literature and art.

The following are included amongst works of literature and art (Art. 4):

(*a*) Books, pamphlets, periodicals, collections of letters and all other writings (*b*), falling within the literary domain.

(*b*) Dramatic, dramatic-musical, and choreographic works.

(*c*) Designs, figures, maps, plans, plastic works, and sketches for literary purposes, where these works cannot, by reason of their destination, be considered works of art.

(*d*) Speeches for instruction, edification, or amusement.

(*e*) Musical works, with or without words.

(*f*) Works of art, such as pictures, designs, plans, and sketches for architectural works, engravings, sculptures, and plastic works, with the exception of architectural works.

Statutes and other official documents and speeches delivered in public assemblies are not protected; nor are trade announcements nor artistic works upon articles of industry if reproduced with the same object (*c*). (Art. 5.)

Collaborations, &c.

Collaborations belong to the authors jointly, but any one of the joint authors may sue for infringement. (Art. 7.)

In the case of publications comprising distinct works of several authors, copyright in the entire work belongs to the publisher, but copyright in the distinct articles belongs to the several authors, who, however, in case they publish separately, must indicate the work in which their article previously appeared (Art. 8); and in the absence of stipulation to the contrary, writers in reviews, annuals, and almanacs cannot, without the consent of the publisher, publish their articles separately till the expiration of two years. (Art. 9.)

Primâ facie, the person named as the author of a work at its first appearance is the true author. When a work appears in

(*a*) Taken from the French translation in 'Le Droit d'Auteur,' 1896.

(*b*) Not everything written is a "writing." Apparently there must be intellectuality and originality, Supreme Court, 7th Nov., 1900; but a directory requires intellectual effort, Cour de Cassation, 24th Sept., 1901, *Ippoldt* v. *Erben*.

(*c*) This clause gives rise to difficulties; but it has been held that pictorial postcards may not copy from each other, Supreme Court of Vienna, 20th Jan., 1903, *Wetzel* v. *Fuchs*.

many copies or reproductions, all must have the name inscribed upon the title-page, dedication, preface, or end of the work, and, in the case of publications composed of the works of several collaborators, at the beginning or end of each article. As regards works of art and photographs, it is sufficient to indicate the name upon the work itself or its mount. In the case of works performed, the name should be announced at the first performance. (Art. 10.) If a work appears without any indication of the true name of the author it will be considered an anonymous or pseudonymous work, and the publisher is authorized to exercise the author's rights. (Art. 11.)

Portraits and photographs.

The person who gives a commission is entitled to the copyright in commissioned works of art and photographs. Portrait photographs can only be reproduced with the consent of the person photographed or his heirs. The copyright in photographs taken for an industrial purpose belongs to the proprietor of the industry. (Arts. 12 and 13.)

Assignment and publishing agreements.

Copyright, so long as it is retained by the author or his heirs, is free from execution (Art. 14), passes to the author's heirs (Art. 15), and may be assigned, with or without restrictions, by contract or will. A contract by an author to assign his copyright in all his future works, or all his works of a particular class, though a good contract, may be repudiated within a year, unless a shorter time has been agreed. (Art. 16.)

Abandonment of a literary or musical work, or a work of art or photograph, *to third persons without consideration does not*, without special stipulation, pass the copyright, but if consideration is given a transfer of the copyright is implied, unless the circumstances indicate a contrary intention. (Arts. 17 and 18.)

If a publisher fails to fulfil his contract to publish within three years, the author can hold him to his contract and sue for damages or rescind the contract, without liability to re-pay anything he has received under the contract. (Art. 20.)

Art. 21 makes it an offence to unlawfully claim the rights of the author, and Art. 22 gives an author a right to damages and in some cases to an injunction if the title or appearance of his work is copied.

Extent of Copyright.

(a) *Literary Works.*

Meaning of copyright.

Copyright in a literary work includes the exclusive right of publishing the work, multiplying copies, causing it to be sold,

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and translating it; in the case of a scenic work it includes the right of public performance; in the case of speeches, not yet lawfully published, it includes the exclusive right of reciting in public. Translations are protected as original works. (Art. 24.)

Piracy.

The following in particular are piracies (Art. 24):

(*a*) Publication of an unpublished work (*a*).

(*b*) Publication of a collection of letters without the consent of their author or his heirs.

(*c*) Publication of an extract or arrangement, unless it has the character of an original work.

(*d*) Reprinting a work by an author or publisher contrary to a publishing agreement.

(*e*) Manufacture by a publisher of a larger number of copies than agreed.

Public performance of a scenic work is piracy, even if it be an adaptation or unlawful translation of the original work. (Art. 30.)

The following are not piracies (Art. 25):

(*a*) Verbatim quotation of small portions of a previous work.

(*b*) Insertion of detached articles, sketches, or isolated designs in the body of a larger work of science, or in the body of a collection of the works of divers authors or collections for scholastic purposes; but the source must be acknowledged.

(*c*) A simple account of a published work or a public speech.

(*d*) Isolated copies not intended for sale.

(*e*) Reprinting words to accompany a musical score, providing the reprint is along with the music or is made solely with the view of being utilized at the performance of the musical work, and this object is indicated. The libretti of oratorios, operas, operettas, and vaudevilles are excepted from this clause.

Newspapers.

Isolated articles, telegrams, and news may be reproduced. (Art. 27.)

Translations.

If an author wishes to reserve his right of translation, he must state this clearly on the title-page, preface, or beginning of the work, and whether he reserves it in all or only in certain named languages. The right of translation reserved lapses if not exercised within three years. (Art. 28.) But without mention of reserve an author has the exclusive right of translation (a) as long as a work has not been lawfully

(*a*) The Austrian courts hold that public representation of a dramatic piece is not a publication of it. Cour de Cassation de Vienne, Oct. 1898, *Hoirs de Félix Bloch* v. *Stubenroll*.

published; (b) into a living language where the work has been originally published in a dead language; (c) into one of the languages in which a work has been originally published, where it was simultaneously published in several languages. (Art. 29.)

(b) *Musical Works.*

Copyright. Copyright in musical works includes the exclusive right of publishing a work, multiplying copies, causing it to be sold, and publicly performing it. (Art. 31.)

Piracy. Art. 24 (above) applies by analogy to musical works, and the publication of extracts, medleys, and arrangements is piracy (Art. 32); but the following are not piracies:

(*a*) The publication of variations, transcriptions, fantasias, studies, and orchestrations, if they have the character of original works.

(*b*) Citation of isolated passages.

(*c*) Insertion of detached compositions, with acknowledgment of source, in larger works of science or collections of divers composers intended for use in schools other than schools of music.

(*d*) Making isolated copies not for sale.

Right of performance. The author of a scenic work has the exclusive right of public representation, but in the case of musical works the right of public performance must be expressly reserved and clearly indicated on every copy. (Art. 34.) Mechanical instruments for producing tunes are not infringements of the composer's rights. (Art. 36.)

(c) *Works of Art.*

Copyright. Copyright in pictorial works of art includes the exclusive right of publishing the work, reproducing it, and causing the reproductions to be sold. The author of a work created by a lawful reproduction of another work of art has copyright in his work as though it were an original work if it has been reproduced by a different artistic process from the original work, but it is not permissible to reproduce the reproduction without the authorization of the author of the original work. (Art. 37.)

Piracy. Art. 24 (above) applies by analogy to works of art, and it is piracy (a) to reproduce by another process the same work; (b) to copy indirectly from a reproduction; (c) to apply

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the work to a work of architecture or industry (Art. 38); but the following are not piracies (Art 39):

(*a*) Creation of a new work in which a pictorial work of art has been partly made use of.

(*b*) Copies not intended for sale; but the name or signature of the author must not be placed on the copy.

(*c*) Copies of a painting or drawing by plastic art or *vice versâ*.

(*d*) Copies of works of art permanently exposed to public view (*a*), with the exception of copies of plastic works by the same art.

(*e*) Insertion, with acknowledgment of source, of copies of works of art to illustrate the text of a literary work.

(d) *Photographic Works.*

Copyright. Copyright in photographs includes the right of publishing, multiplying copies, and causing the copies to be sold, but, except in the case of portraits, the photographs or their mounts must have placed on them visibly (a) the name, description (if any), and residence of the author; and (b) the year of publication. (Art. 40.)

Piracy. It is not piracy (a) to make isolated copies not for sale; (b) to insert, with acknowledgment of source, isolated photographs to illustrate the text of a literary work. (Art. 41.)

The above provisions do not apply to photographs of protected works. (Art. 42.)

(e) *Duration of Copyright.*

Works of literature and art. As a general rule copyright in works of literature and art expire thirty years after the death of the author. Posthumous works, if published within the last five years of this period, enjoy protection for five years. In the case of collaborations copyright expires thirty years after the death of the last survivor, but when the right of one author expires sooner, his share in the copyright passes to his co-authors. (Art. 43.)

Anonymous works enjoy protection for thirty years from publication, but this can be extended, before the thirty years have elapsed, to the full period by entry of the author's true name in a register to be kept by the Minister of Commerce. (Art. 44.)

(*a*) Probably this provision only applies to works in the public streets and squares. See cases under a somewhat similar clause in the Swiss Copyright Law, *post*.

Corporations, societies, &c., are granted a period of thirty years from publication (Art. 46), and the exclusive right of translation expires five years after publication of a lawful translation. (Art. 47.)

Translation.

Photographs are protected for ten years. (Art. 48.)

Photographs.

When a work is published in several parts copyright dates from each part, but if the parts ought to be considered as forming one whole, it dates from publication of the last part, but the parts must appear at intervals of not less than three years. (Art. 49.)

Works published in parts.

Remedies for Infringement.

In the case of wilful infringements, the author can take penal proceedings in which the defendant may be fined or imprisoned (Art. 51), ordered to pay damages (Art. 57), and the infringements confiscated (Art. 56). A civil action for damages can be brought against a person wilfully infringing; also against all persons who in a culpable manner make unlawful reproductions or copies, for valuable consideration. (Art. 60.) Even if the defendant has acted innocently, the proprietor of the copyright can bring a civil action to establish his right, restrain future infringements, and have the infringements confiscated. The defendant will also in this case be ordered to pay the plaintiff any profits he may have made. (Art. 61.) The law also imposes penalties for placing a name upon a work with a view to deceive (Art. 53), and for not acknowledging the source, when such source ought to be acknowledged. (Art. 52.)

Remedies.

Arts. 66 and 67 are transitory clauses saving the rights of persons who have lawfully manufactured copies or lawfully represented musical and scenic works before the passing of this law.

Transitory provisions.

HUNGARY.

Up to 1884, Hungary had no law in copyright, though the *judex curialis* published provisions in 1861 declaring that the products of the intellect were protected by law. The Austrian law of 1846 was never expressly applied, though the Hungarian courts often acted on the provisions of that law (*a*). The law was, however, very uncertain, and in 1884 the law previously referred to was passed; this law is similar in many respects to

Law prior to 1884.

(*a*) 'Lois françaises et étrangères,' par M. Lyon-Caen.

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the Austrian law of 1895, but grants a longer period of protection to the author. Its provisions are as follows (*a*):

Law of 1884.

Art. 1. The reproduction of a literary work by a mechanical process, its publication and offering for sale, constitute an exclusive right for the author during the period of protection fixed by law.

When the work has several authors, and the contribution of each cannot be distinguished, each author, in the absence of agreement to the contrary, has the right of reproduction, publication, and sale, after previously indemnifying the other authors.

The court is to determine the indemnity according to the circumstances on the evidence of experts, if necessary. None of the authors can be compelled against their will to put their name on the work.

When the contribution of each author can be distinguished, the consent of each is necessary for the reproduction, publication, and offering for sale of the distinct portions pertaining to each.

Art. 2. In the case of literary works composed of articles by several persons and considered as forming one single whole, the editor takes the benefit of legal protection as an author.

Copyright in each separate article belongs to each collaborator.

In the case of collective works considered as forming one single whole, and composed of writings or articles which have not as yet been published and are not, therefore, protected by this law, the editor enjoys the same legal protection as the author.

Art. 3. Copyright can be transferred by contract or by will with or without reservation. In the absence of any disposition, the right goes to the legal heirs of the author.

The right of the Crown to unclaimed estates on failure of heirs does not extend to copyright.

When one of the authors of a work composed in collaboration dies without heirs, his rights pass to the surviving collaborators.

Execution cannot be levied on copyright as long as it belongs to the author or his heirs or legatees.

Execution can only be levied on the material profits coming to the author or his heirs or legatees from the publication or public representation of the work.

Infringement.

Art. 5. The reproduction of a literary work in whole or in

(*a*) This translation is made from the French translation of M. Lyon-Caen.

part by a mechanical process, or its publication or offering for sale in whole or in part without the consent of the lawful owner (*a*), are considered an infringement of copyright and are forbidden.

A copy by hand is to be treated as a reproduction by a mechanical process, when the copy so made is intended as a substitute for mechanical reproduction.

Art. 6. The following acts in addition are to be considered infringements:

(1) The reproduction, publication, and offering for sale without the consent of the author of an unpublished manuscript. The lawful possessor of a manuscript or of a copy of a manuscript cannot do these acts without the consent of the author.

The reproduction, &c., of verbal expositions or of lectures given for purposes of discussion or education.

Every publication made by either author or publisher contrary to the agreement between them or to the law.

Printing more copies of a work than agreed upon between the author and publisher.

The unlawful publication by one of the authors of a work written in collaboration.

The publication in one collection without the consent of the author of speeches delivered in debates or public deliberations in different circumstances on different subjects.

The unlawful insertion in any newspaper of telegrams and information collected and reproduced solely for the purpose of being printed in newspapers. The provisions of Art. 9 (1) are to be applied to the insertion of such communications after their publication in any paper.

Art. 7. A translation of an original work without the consent of the author is considered an infringement in the following cases: Translations.

When the work having appeared in a dead language is published in a translation in a living one.

When the work having appeared in several languages is published in a translation in one of those languages.

When the author has reserved the right of translation on the title-page or at the commencement of the original work, on condition that the (author's) translation has been commenced within a year from the publication of the original, and finished within three years. Protection ceases in the case of languages in which a translation has not been commenced in

(*a*) Arts. 1, 2, and 3.

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the first year. When the reservation is only made for certain languages, the work can be freely translated into any other.

In the case of original works appearing in several volumes or parts, each volume or part will be considered a separate work, and the reservation must be repeated on each volume or part. The periods relating to translations only run from the 1st of January after the publication of the original.

In the case of works intended for the stage, the translation must be finished within six months.

Information shall be given of the commencement and finishing of the translation for the purpose of being entered in a register in the period fixed by this law (*a*).

Translations of literary works not yet published and protected by this law (*b*), are to be considered an infringement of copyright.

Art. 8. Translations, like original works, are protected against unlawful reproduction and sale.

Acts which are not infringements.

Art. 9. The following acts are not considered infringements:

The literal citation of some passages or small parts of a work already published, or the insertion of small works already reproduced or published, in a work of greater size which has from its contents an independent scientific purpose, provided this insertion is made within limited bounds explained by the purpose in view, or such insertion is in a collection composed of extracts from several writers for use in schools, for religious or educational objects, on condition that the name of the author or the source be clearly shown.

The insertion of isolated communications extracted from papers and reviews other than literary and scientific works, or important communications bearing at their head a prohibition against reproduction.

The communication of public decrees and debates.

The reproduction of speeches delivered in public debates and deliberations.

The reproduction of a few articles extracted from the collective works referred to in Art. 2, par. 3.

Art. 10. The 53rd law of 1880 applies to the reproductions of laws and orders (*c*).

(*a*) Arts. 42 and 44. (*b*) Art. 6 (1) and (2).

(*c*) By which the exclusive right of publishing laws, &c., is reserved to the State. 'Lois françaises et étrangères,' par M. Lyon-Caen.

Duration of Copyright.

Duration of copyright.

Art. 11. Subject to the provisions contained in the following articles, the protection assured by the law against infringement lasts during the life of the author and fifty years after his death.

Art. 12. In the case of collaborative works, the period of protection runs from the death of the surviving collaborator.

In the case of collective works, the period of protection for each article varies according as the authors of the articles are named or not.

The collections mentioned in Art. 6 (6) enjoy legal protection for fifty years after the death of the author, but if a collection of speeches is not published during the life of the author or within five years from his death, publication cannot be made without the consent of his representatives.

Art. 13. Literary works which have appeared in the life of the author do not enjoy the protection fixed by Art. 11, unless the true name of the author or his recognized literary name appears on the title-page, under the dedication, or at the end of the preface.

In collective works it is sufficient for the protection of each article if the name of the author be indicated at the commencement or end of the article.

Anonymous works.

Pseudonymous or anonymous works which show the date of their first publication are protected for fifty years from this date. If, however, during this fifty years the name of the author has been declared and registered, the period of protection is calculated according to Art. 11.

Posthumous works.

Art. 14. A posthumous work is protected for fifty years from the death of the author. If the work be published for the first time more than forty-five years from the death of the author, but within fifty years, it enjoys protection for fifty years from publication.

Academies.

Art. 15. Academies, universities, corporations, and other persons legally constituted, as well as educational establishments, enjoy, in so far as they can be considered authors of works published by them, protection for thirty years from the first publication.

Works in parts.

Art. 16. In the case of works appearing in several volumes or parts, the period of protection runs from the first publication of each volume or part.

In the case of works which treat of one and the same subject

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in several parts or volumes, and which consequently must be considered as forming a single whole, the period of protection runs from the publication of the last part or volume. If, however, more than three years have elapsed between the publication of different volumes or parts, the parts or volumes already issued will be considered as an independent work, and the subsequent parts or volumes as a new work.

Translations.

Art. 17. The prohibition against translation lasts, in the case of Art. 7 (2), for five years from publication of the original work, and in the case of Art. 7 (3) five years from the first publication of the authorized translation.

Art. 18. The period of protection fixed by the preceding articles runs from the 1st January after first publication or the death of the author.

General Provisions.

Punishment for infringement.

Art. 19. Any person who intentionally or negligently commits an act of infringement is punishable for this offence by a fine up to 1000 florins, in addition to the damages payable to the author or his heirs. The fine is payable by each infringer. If the fine is not recoverable, the infringer may be imprisoned for a time to be determined by the court in its sentence on conviction. For the purpose of this determination, an imprisonment of one day may be given for a fine of one to ten florins.

If the infringer has acted unintentionally and without negligence, the penalty is not applicable, but he is under the obligation of making good the damage caused to the author or his assigns, though only to the extent of his profits.

Art. 20. Any person who causes another to infringe incurs the penalty declared by Art. 19, and is under the obligation of compensating the author or his representative according to Art. 19, even when the actual offender is not culpable under that Art., nor bound to pay compensation.

If the principal infringer has acted intentionally or negligently, both are liable in damages severally and jointly. Other accomplices are punishable and liable to pay damages according to the general principles of law.

Art. 21 provides for confiscation of infringing articles.

Confiscation takes place even when the infringer has acted unintentionally and without negligence, and is allowed even against his heirs and legatees.

The injured party may take the copies and the implements

used for infringement, in whole or in part, at cost price, so long as that does not affect the rights of third parties.

Art. 22. The offence of piracy is committed as soon as the first copy of a work or a manuscript, the production of which is unlawful, has been published.

A simple attempt at reproduction does not involve either penalty or damages, but in such case, the finished parts and the implements may be confiscated.

Art. 23. Any person who intentionally and in course of trade offers for sale, sells, or circulates in any way a work illegally produced, is under the obligation of making good the damage caused to the author or his representative, and is subject in addition to the fine fixed by Art. 19.

Copies intended for sale are confiscated even when the *mala fides* of the distributor is not proved.

Art. 24. When in the case of Art. 9, information as to the source or name has been omitted, whether knowingly or unintentionally, any person who has reproduced the work or caused another to do so, is liable to a fine up to fifty florins. The same penalty is applicable to any person who against the will of the author, mentions his name on the work (*a*).

In this case, imprisonment cannot be substituted for the pecuniary penalty, and there is no cause for compensation.

Arts. 25–35 relate to procedure.

Art. 36. The right of taking proceedings in relation to the penalty to be applied in the case of piracy, and in relation to damages and profits, is lost by prescription after three years. Prescription.

Prescription commences from the day when pirated copies have begun to be circulated, or from the day of publication of the work.

Art. 37. The right of taking proceedings in relation to the penalty to be imposed for offering for sale unlawful reproductions, and for damages for the injury thereby done, is lost by prescription after three years.

This commences from the last day of such offering for sale.

Art. 38. Unauthorized reproduction and offering for sale are not punishable when the person having the right to take proceedings, has not done so within the period of prescription, and within three months of the day when he became cognizant of the offence and the offender.

Art. 39. The destruction and confiscation of pirated copies or implements used in reproduction, may be claimed as long

(*a*) Art. 1, par. (3).

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as copies intended for the market, or tools used for the purpose indicated, are in existence.

Art. 40. When it is a question of an act contrary to Art. 24, the right of action of the injured party is lost after three months from the date when the printed work has commenced to be circulated.

Art. 41. The interruption and suspension of prescription are subject to the general rules.

Registration.

Registration.

Art. 42. The register, in which registration is to be made according to Arts. 7, 13, 55, and 65, is kept at the Ministry of Agriculture, Trade, and Commerce.

Art. 43. Registration is made on the verbal or written request of the interested person, without preliminary examination into the truth or lawfulness of the facts stated.

Art. 44. Any person may inspect the register, and require verified extracts to be delivered to him.

The registrations effected are to be published in a paper to be determined by such minister.

The registration of works appearing in Croatia-Slavonia, as also the works of persons within the jurisdiction of those countries appearing in a foreign country, are also to be published in a paper appearing in Croatia-Slavonia to be selected by the Ban.

It is the duty of the Minister of Agriculture, &c., to make rules for the registration procedure.

CHAP. II.—*Musical Works.*

Musical works.

Art. 45. The provisions of Arts. 1 to 6, and 9 to 14, apply to authors of musical works in reference to their rights of reproduction, publication, and sale.

Infringement.

Art. 46. The following are infringements: Every arrangement of a musical work published without the consent of the author which cannot be considered as a composition in itself, notably extracts from musical works; the transcription of a musical work for one or more instruments or voices; in addition, the reproduction without artistic variation of several motifs or melodies drawn from one and the same composition.

Art. 47. The following are not considered infringements: The quotation of isolated passages from a musical work which has already been published; further, the insertion of musical

works of small extent, within limited bounds fixed by the end in view, in an independent scientific work, or in a collection of different works put together exclusively for schools and education. In addition, the author, or the source from which the *morceau* is taken, must be indicated. If this is not done, Art. 24 applies.

Art. 48. Further, the use of a published work as a text for a musical composition, when the text is printed with the composition, is not to be treated as an infringement.

Words which by their very nature are only intended to be set to music, such as the words of an opera, an oratorio, &c., are excepted. These can only be set to music with the consent of the author. The author is considered to have given his consent if he has handed over the text to a composer without any reservation.

For the publication of the text without music, the special permission of the author of the text or his assign is necessary.

CHAP. III.—*Representation or Performance of Theatrical Works and Operas.*

Art. 49. The exclusive right of representation or performance of theatrical or musical works, or operas, belongs to the author. Theatrical works.

Art. 50. Theatrical and dramatic musical works cannot be represented on the stage without the consent of the author, even if they have been printed or are to be found on the market.

Overtures, entr'actes, or other parts taken from these works may be performed off the stage without consent.

Art. 51. Musical works which have been reproduced and put on the market can be represented or performed publicly, even without the author's consent, when the author has not reserved the right of performance on the title-page or at the beginning of the work.

Art. 52. When a work has several authors, pars. 2 and 3 of Art. 1 may be applied to the public representation or performance, with the qualification that for the performance of musical works accompanied by words, including operas, the consent of the composer is in general sufficient, and for the performance of these works without music the consent of the composer is not sufficient.

Art. 53. The person who lawfully translates a dramatic work enjoys legal protection as to the public representation of his translation.

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Art. 54. The public representation of an unlawful translation (*a*) or arrangement (*b*) is considered infringement.

Art. 55. Articles 11 to 18 are applicable in relation to the duration of the right of public representation or performance.

Pseudonymous works or works published without indication of the author's name (*c*), enjoy, when they have not yet been published, protection for fifty years from their first representation.

But when either the author or the assignee of a pseudonymous or anonymous work, has declared the true name of the author, for purposes of registration, within fifty years, or when the author publishes within this period, his work under his true name, the duration of protection is calculated according to Art. 11.

Art. 56. The person indicated as author in the announcements of the representation may be considered as the author of dramatic, musical, and dramatico-musical works not yet published, but already publicly represented or performed.

Art. 57. Any person who intentionally or negligently represents or performs publicly, without being entitled so to do, a dramatic, musical, or dramatico-musical work, in entirety or with unimportant alterations, is under the obligation to the author or his representatives of making good the damage, and is punishable with the fine fixed by Art. 19.

Art. 20 is applicable to the author of an unlawful representation or performance, but so that the amount of the confiscation shall be fixed in conformity with Art. 58.

Art. 58. The gross receipts from the unlawful representations or performances may be payable by way of damages, without deduction of expenses.

If the work has been represented or performed together with other works, the proportionate part of the receipts shall be taken as the amount of compensation.

When there have been no receipts, or their amount cannot be ascertained, the judge shall estimate the damages.

When there has neither been intention to infringe nor negligence on the part of the offender, no penalty is applicable, and he is only liable in damages to the extent of his profits.

Art. 59. Arts. 3, and 25 to 44, are also applicable to the public representation and performance of dramatic, musical, and dramatico-musical works.

(*a*) Art. 7. (*b*) Art. 46.
(*c*) Art. 13, par. 1.

CHAP. IV.—*Works of Art.*

Works of art.

Art. 60. The exclusive right of reproducing, in whole or in part, of publishing and selling works of the figurative arts, drawing, engraving, painting, and sculpture, belongs to the author.

Infringement.

Art. 61. The reproduction of such works shall be considered an infringement, when it takes place without the author's consent, and the copies are intended for sale.

Also, when the original work is reproduced in another art or style.

When the reproduction is not taken directly from the original, but from some copy.

When a work of the figurative arts is imitated in works of architecture, trade, or manufacture.

When the author or publisher makes a reproduction contrary to his agreement or the law.

When the publisher causes a larger number of copies to be made than he is entitled to make under his agreement.

What not infringements.

Art. 62. The following are not infringements:

(1) An arrangement by means of which one derives several new works from one original.

(2) Isolated copies not intended for sale. On such copies there must not be indicated the signature, the name, or the initials of the author's name, under the penalties fixed by Art. 19.

(3) The reproduction in another art, of works placed in perpetuity in streets, public squares, and other public places of the same kind (*a*).

(4) The reproduction of detached works of the figurative arts, within limited bounds fixed by the end in view, to explain a work essentially literary.

Art. 63. A person who lawfully reproduces the work of another in a different style will be considered an author in respect of the work created by him, even if the original work have become public property.

Art. 64. When an author alienates his work, the right of reproduction will not be considered as included in the alienation.

In the case of portraits and busts to order, this right belongs to the giver of the order.

The owner is not bound to send back the work to the

(*a*) See cases decided under Art. 11 of the Swiss Law of 1883, *post*.

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author or his representative in order that he may reproduce it.

Art. 65. In other respects, Arts. 3, and 11 to 44, are applicable to creations of the figurative arts, to their authors, and to the publication of these works periodically or in a collection.

In respect to works already published, protection is allowed in conformity with Art. 13, varying with the rules according as the name of the author has been indicated on the work or not, and as the want of indication has been cured or not by registration.

Art. 66. The provisions of this law are not applicable to works of architecture or to works of the figurative arts transferred on to articles of manufacture.

CHAP. V.—*Geological or Geographical Charts, Drawings, and Diagrams of Natural History, of Geometry, of Architecture, and other Technical Drawings and Diagrams.*

Maps, technical drawings, &c.

Art. 67. Arts. 1 to 44 of this law apply to geological and geographical charts, drawings, and diagrams of natural history, of geometry, of architecture, when from their purpose they cannot be considered works of the figurative arts. But Arts. 60 to 66 of this law are applicable when from their purpose the works come under the latter head.

Art. 68. The insertion of drawings and diagrams in a literary work when they only serve to explain the text are not to be considered infringements, provided that the author or the source be expressly indicated.

CHAP. VI.—*Photographs.*

Photographs.

Art. 69. The exclusive right of reproducing by a mechanical process, of publication, and of offering for sale a work obtained by photography, belongs to the author of the original work during the period fixed by Art. 70.

For the existence of this exclusive right, there must be indicated on each copy of the impressions or reproductions (1) the name or firm and the address of the author or publisher of the original publication; (2) the year in which the impressions or reproductions were first published.

Duration.

Art. 70. The protection secured by this law belongs to the author of a photographic work or his representatives during five years from the expiration of the year in which the original first appeared.

If the impression or reproduction has not been published, the period of five years runs from the end of the year in which the original of the photographic publication was obtained.

The provisions of Art. 16 apply to photographs of works which have come out in several volumes.

Art. 71. The reproduction of a photographic work by a mechanical process without the consent of the rightful owner, and for a commercial purpose, is considered an infringement.

Art. 72. The right of reproduction of portraits obtained by photography belongs exclusively to the person who gives the order.

Art. 73. The following are not considered infringements:

(1) Using a photograph so as to create new works different from the original work.

(2) The reproduction of a photographic work by applying it to an industrial product.

(3) The reproduction of a photograph in another article.

Art. 74. A person who reproduces a photographic work of another in a different art is considered as the author of the work created by him, agreeably to Art. 63.

Art. 75. Articles 3, 8, 19 to 44, and 68, are applicable to photographs.

CHAP. VII.—*General Provisions.*

General provisions.

Art. 76. This law came into force on the 1st July, 1884.

Its protection extends also to literary, musical, technical, photographic, and dramatic works, and works of the plastic arts, which appeared before that date.

Art. 77. Copies existing before that date, of which up to then the reproduction was not forbidden, can be circulated as in the past.

Type and other analogous means of reproduction (Art. 21) may be used, if the fabrication was not previously forbidden.

Art. 78. Dramatico-musical works lawfully represented before the coming into force of this law may continue to be represented.

Art. 79. This law applies to the works of Hungarian citizens even when they have appeared in a foreign country.

Art. 80. This law applies even when a Hungarian citizen violates its provisions in a foreign country to the prejudice of a Hungarian citizen.

Publishing contracts are specially dealt with by Articles 515 to 533 of the Hungarian Code of Commerce of 1875.

Rights of Foreigners in Austria-Hungary.

Austria and Hungary have not yet joined the Berne Convention, though there is considerable agitation in favour of their doing so. As to Austria, the old law of 1846 recognized the rights of foreigners upon the basis of reciprocity; but by Article 2 of the new law of 26th December, 1895, the rights of foreigners are to be regulated solely by treaty. A slight exception is made in favour of works published in the German Empire, but this exception is now of no moment, as the rights of German authors are regulated by the recent treaty concluded between Germany and Austria on the 30th December, 1899. Hungary, likewise, does not recognize the principle of reciprocity. Article 79 of the law of 1884 expressly declares that that law is not to apply to the works of foreigners, except (a) works of foreigners published by native publishers; (b) works of foreigners who have lived in Hungary at least two years in a continuous manner, and have paid taxes without break.

Austria-Hungary has concluded a treaty with Great Britain, dated the 24th April, 1893, which will be found set out in an Appendix to this work; but she has no treaty with the United States. Besides the treaties with Germany and Great Britain above referred to, she has a treaty with France, dated the 11th December, 1866, and with Italy, dated the 8th July, 1890.

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Legislation before 1893.

The law of copyright in this country was till 1876 very incomplete, the enactments on the subject being numerous, fragmentary, and passed at various dates between the years 1839 and 1875. The law of 8th June, 1876, and the two laws of the 12th May, 1877, consolidated the whole; but in the year 1893 these were repealed, and a new law was passed with a view to enabling Norway to become a party to the Berne Convention. The law referred to is a law of 4th July, 1893, which is retrospective, subject to existing rights and repeals all previous laws. Its principal provisions are as follows (*a*):

Origin and extent of copyright.

Within the limits of the present law, an author has the exclusive rights of publishing his writings by copying his manuscript, by reproduction by means of mechanical or chemical process, by dramatic representation, by recitation,

(*d*) Taken from the French translation in 'Le Droit d'Auteur.'

or any reproduction to help language. But if the work be published, an author must specially reserve the right of recitation. (Art. 1.)

Copyright also extends to (a) speeches; (b) musical compositions; but, as to a published musical composition, public performance, not of a dramatic character, is lawful, unless the composer has forbidden it upon the title-page or commencement of the work; (c) mathematical, geographical, and topographical designs, natural, technical, and other histories, also graphic and plastic representations which cannot be considered as works of art. (Art. 2.)

Publishers of journals, periodicals, and works comprising contributions by several collaborators have the exclusive right of publishing the whole work, but, in the absence of agreement to the contrary, the author preserves his copyright in his contribution. (Art. 3.)

Translations.

A translation from a language into a dialect or *vice versâ*, or from one dialect to another, must not be made without the consent of the owner of the copyright. Norwegian, Danish, and Swedish are treated as dialects of the same language. If simultaneously, or within a year, a work shall have been lawfully published in several languages, a translation may not be made into one of these languages without the consent of the proprietor of the copyright. In any other case no translation may, without the like consent, be made for ten years from the end of the year of publication, or in the case of books published in parts from the publication of the last part. In the case of books composed of several volumes issued at intervals, each volume is treated as a separate work. (Art. 4.)

A translation is protected as an original work. (Art. 5.)

Arts. 6 and 7 regulate the rights of co-authors *inter se*.

Copyright in public documents.

There is no copyright in laws, ordinances, judicial decisions, and public documents; nor in speeches delivered in representative assemblies, political speeches, and such like. (Art. 8.)

Assignment of copyright.

Copyright may be assigned in whole or in part. Assignment of the right to publish a work in a particular manner does not imply a right to publish in any other manner, nor to dramatise, translate, or adapt it. Nor may the transferee make alterations in the work without the author's consent. This clause also contains provisions regulating the rights of authors and publishers *inter se*. (Art. 9.)

A person to whom an author has granted the right of representing a dramatic or mimic or dramatico-musical work or the right of public performance of a musical work has, in the

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absence of stipulation to the contrary, the right to represent the work in what manner and at what times he pleases, but he cannot grant this right to others. In the like absence of stipulation to the contrary, the author preserves the right to grant similar rights to others and to represent or perform the work himself. When an author grants the *exclusive* right of representation or performance, if the assignee does not represent or perform, as the case may be, for five consecutive years, the author and his heirs can either themselves perform or represent or grant the right to others. (Art. 10.)

On the death of an author his copyright devolves in accordance with the general law, and in the case of unpublished MSS. an author may by will give directions as to publication. (Art. 11.)

Creditors have no rights in respect of unpublished MSS., and only after the death of the author can they have the right to compel a re-edition. (Art. 12.)

Piracy.

Not only is the reproduction of an entire work a piracy, but also reproductions which take the form of abridgements, additions, or alterations, including dramatizations and adaptations, unless these result in producing an essentially new and original work. (Art. 13.)

The following are not piracies: (1) Insertions of short detached portions of published works in a work which, taken as a whole, constitutes an original work; (2) analogous utilization, after ten years, in collections from the works of various authors or composers intended for use in churches, schools, and for elementary or general education; (3) reprinting, as the libretti of musical compositions, or upon concert programmes, detached poems of short length, with a view to their utilization at the public performance of musical compositions; (4) reprinting, as explanatory text to artistic illustrations, poems and short pieces of prose, provided the illustrations are the essential part of the work and that at least two years have elapsed since the first publication of the writing.

In all the above cases the source must be clearly indicated. (Art. 14.)

Newspapers and reviews may reproduce, in the original language or in translation, detached articles or communications from other newspapers or reviews, unless the right of reproduction has been specially reserved. The source must be clearly indicated. (Art. 15.)

Remedies for piracy.

Infringements may be ordered to be destroyed or delivered to the proprietor of the copyright in reduction, to the amount

of their value, of the damages. If the defendant has acted in good faith delivery and destruction cannot be exacted, but the infringements are sequestrated during the period of copyright. (Art. 16.)

Whoever shall, whether intentionally or not, reproduce a work in violation of this law or import a work reproduced abroad in violation of copyright, or who shall knowingly sell, distribute, or let on hire a work reproduced or imported in violation of this law shall be liable to a fine of from 100 to 2000 crowns. The party in default shall also be liable in damages. (Art. 17.) Likewise a fine of from 20 to 500 crowns is imposed for an unlawful public performance of a musical or dramatic work, and the person in default must pay damages to a sum not less than the net proceeds of the performance. (Art. 18.) If, however, the defendant has acted in good faith he need only pay the amount of his profits. (Art. 19.) A fine of from 2 to 100 crowns is imposed for not indicating the source in the cases where this is prescribed. (Art. 20.)

Duration of copyright.

The period of protection is during the life of the author and fifty years from the end of the year of his death. (Art. 21.) Anonymous and pseudonymous works are protected for fifty years from the end of the year of first publication, but the author can obtain protection for the full period by making known his true name in the manner prescribed. (Art. 22.)

Recitation of a work is lawful, provided it does not take the form of a dramatic performance, as soon as a period of three years has elapsed since the end of the year in which the work first appeared. (Art. 24.)

Artistic copyright.

Within the limits of the present law, an artist has the exclusive right of selling or publishing reproductions of his work or any part of it. It makes no difference whether the reproduction requires an artistic faculty or is by a purely mechanical or chemical process. No one can, without leave of the artist, utilise for an architectural work original architectural designs any more than designs, models, &c., which have been executed according to original designs. (Art. 25.)

Any one lawfully reproducing a work of art in another artistic form, has the same copyright in his reproduction as in an original work of art. (Art. 26.)

Article 27 relates to the rights of co-artists *inter se*.

Assignment.

An artist can assign his copyright in whole or in part. In the absence of agreement to the contrary, the assignment of a work of art does not imply a right to make copies, but this right still belongs to the artist. In the case of commissioned

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portraits, however, whether paintings or sculptures, the artist cannot exercise his right without the consent of the person who has given the commission. The right to reproduce in a particular manner does not imply a right to reproduce in any other manner. When a work of art has been published in a journal or periodical, in the absence of contrary stipulation, the artist preserves the right to publish in any other way. (Art. 28.)

Unpublished works of art are protected from the artist's creditors. (Art. 30.)

Piracy.

Reproduction or utilization of a work of art belonging to another is not rendered lawful by reason of its being reproduced in another size or with other materials than the original, nor is it lawful to reproduce from a lawful copy or to reproduce with modifications, additions, or curtailments, unless an essentially new and original work is thereby produced. (Art. 31.)

On the other hand, it is not a piracy to reproduce works of art detached and inserted in critical works or works of artistic history in connection with, and to explain, the text. But the name of the artist must always be mentioned. (Art. 32.) The penalties are the same as in the case of literary copyright. (Art. 33.)

Duration.

The period of protection is the life of the author and fifty years from the end of the year of his death. In the case of collaborations the fifty years are reckoned from the death of the last survivor. (Art. 34.)

Actions for infringement can only be brought by the injured party, but in the case of anonymous or pseudonymous works the publisher is, until the contrary is proved, authorized to sue on behalf of the author. (Art. 35.)

Photographic copyright.

Copyright in photographs is still regulated by the law of 12th May, 1877, which is very short, and may be given in an abridged form as follows:

Who and what protected.

Art. 1. The person who produces an original photograph from nature, or of a work of art which may lawfully be reproduced in such manner, has the exclusive right to copy it by photography.

Regulations.

Art. 2. The word "*emberettiget*" (protected) must be inscribed on each copy, also the date when such copy was first made, the name of the photographer, and, if it be a reproduction of a work of art, the name of the artist.

Duration

Art. 3. This right subsists for five years from the expiration of the year in which the first copy was made, but in all cases terminates with the life of the photographer.

A photographer is forbidden to make copies of portraits executed to order, without the consent of the person ordering them.

Commissioned photographs.

Art. 4. Penalties for infringement.

Penalties.

Art. 5. Destruction of illegal copies and negatives.

Procedure.

Art. 6. Prosecution for infringement is not undertaken by government.

Art. 7. Right of action is lost after a lapse of two years in any case, or after a year from infringement becoming known to prosecutor. But the provisions of Art. 5 apply so long as the illegal photographs exist.

Prescription.

Art. 9. This law came into force on 1st January, 1878.

Upon Norway becoming, in the year 1896, a member of the Copyright Union, an official assurance was given by the Norwegian authorities to the International Bureau at Berne to the effect that no formalities were required to be observed either for the creation and maintenance of copyright or as a preliminary to taking proceedings for infringement. Nevertheless, a law of 20th June, 1882, would not appear to have been ever repealed. By this law it is provided that a register shall be kept by the university library, in which it shall be lawful to enter all matters concerning the acquisition or preservation of the rights established by the laws of the 8th June, 1876, and the 12th May, 1877. (Art. 1.)

Registration and deposit.

Entries will be made on written request without preliminary verification of the truth of what is alleged in the request.

Any person may require a verified extract from the register, and the public shall be admitted on fixed days and at fixed times to inspect the register.

The entries shall be published in a paper to be designated by the king. (Art. 2.)

A copy of every printed work as also of every new edition, an entry of which is required, must be deposited at the library of the university of Christiania, to be retained. If the entry be made before the work is published, a copy must be deposited as soon as the work has been put in the hands of the booksellers. The copy must, if possible, be bound. (Art. 3.)

A complete and correct copy with plates of every writing, musical work, print, lithograph, wood engraving, &c., which shall have been printed or published within the kingdom during the year must, even when a copy has been deposited agreeably to Art. 3, be sent to the university library at the

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latest before the end of the January of the following year, unless the work is not intended for publication, or is only to appear in conjunction with other works.

If the publication has not yet taken place when the consignments for the year are made, the sending in may be delayed till the end of year following the publication. (Art. 6.)

The printer, in regard to the works printed by him, is responsible for the delivery prescribed in the preceding Article.

Any person who fails to observe Arts. 6 and 7 shall be punishable with a fine of 2 to 50 kroner for each copy omitted.

Proceedings to recover the fines shall be taken in the police court, and shall be instituted by the public ministry on the request of the academic college. (Art. 7.)

Art. 9. In the cases of works over the value of 10 kroner sent in proper time, the publisher is to be paid the surplus over that amount. In such cases he shall send a memorandum.

In calculating whether the price exceeds this sum, the prices of different parts of a work published separately cannot be added together, unless the parts have appeared in one year.

Art. 10 provides for free postage and application of postal regulations. The university is to publish a catalogue of works issued.

The preceding Arts. 6 to 11 apply to printed works published before the 1st January, 1883, and this law shall be in force from that date.

The present effect of this law seems to be that, whilst the copyright is not endangered by the absence of the formalities, yet it is obligatory on the *printer* to make the deposit referred to in Arts. 3 and 6. Registration is optional only, but advisable, as it is believed the Norwegian tribunals treat an entry in the register as *prima facie* evidence of the proprietorship of the copyright (*a*).

Rights of Foreigners.

Literary and artistic works.

With regard to literary and artistic works, the 37th Article of the Law of 4th July, 1893, provides as follows:

"The present law applies to all works of Norwegian subjects, and also to works of foreigners published by a Norwegian publisher. A publishing house is deemed Norwegian when all the partners or, in the case of companies, when all the directors are domiciled in Norway.

"Under conditions of reciprocity, the provisions of this law

(*a*) See 'Le Droit d'Auteur,' 1897, p. 40.

can be rendered applicable by royal decree, to works produced by subjects of other countries, although they have not been published by a Norwegian publisher."

Photographs.

And as to photographs, Art. 8 of the 12th May, 1877, provides that, also on condition of reciprocity, the provisions of that law, might be extended by royal decree to photographs of foreign origin. The king is to determine whether any, and what, provisions of Art. 2 shall apply to such photographs.

Treaties and conventions.

Norway adhered to the Berne Convention on the 13th April, 1896, but she has not ratified the Additional Act of Paris of 1896, because her local law of 1893 does not allow the extended right of translation provided by this Additional Act. Persons domiciled in France enjoy the same rights in relation to literary and artistic copyright as Norwegian subjects by virtue of an additional article to the treaty of commerce concluded between France and Norway and Sweden on the 30th December, 1881. By virtue of a treaty concluded on the 9th October, 1884, between Italy and Norway and Sweden, Italian subjects have similar rights, but this treaty does not extend to photographs. Denmark enjoys copyright in Norway and Sweden by virtue of a Declaration dated the 27th November, 1879, and Sweden enjoys copyright in Norway, and Norway in Sweden, by virtue of royal decrees, dated 16th November, 1877, and 4th February, 1887.

SWEDEN.

Literary copyright in Sweden.

Copyright in this country was formerly perpetual. Literary copyright is now regulated by the law of 10th August, 1877, as modified by the laws of the 10th January, 1883, and 28th May, 1897, and 29th April, 1904. The law resembles in many points the laws of Norway and Denmark. Artistic copyright is governed by another law of the 28th May, 1897, and photographs by a third law of the same date. The law of the 10th August, 1877, modified as above mentioned, applies to works already published before the date of its coming into force on 1st January, 1878, and repeals previous laws. Its principal provisions are as follows:

What protected.

Art. 1 (as modified by the law of 28th May, 1897). For the purposes of this law the following are assimilated to works of literature, viz., musical compositions, drawings of natural history, geographical and marine charts, maps, architectural drawings, and all works which, having regard to their principal object, cannot be classed as mere works of art.

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The author has the exclusive right to reproduce his works by printing, including photo-chemical processes, whether the works are already published or in manuscript.

Persons protected.

Art. 2. The author's right recognized by Art. 1, includes also the exclusive right of reproducing by printing a translation of his work from one dialect into another of the same language. Swedish, Norwegian, and Danish in this respect are considered different dialects of the same language.

Translations.

Art. 3 (as modified by the laws of 16th January, 1883, and 28th May, 1897, and 29th April, 1904). Works of literature published by the author simultaneously in various languages, to be indicated on the title-page or the beginning of the work, are deemed to be written in each of these languages. Publication by means of printing into any other language without the author's permission, is forbidden for a period of ten years from the date of the original publication (*a*).

Art. 4. The translator of a work into another language enjoys in his translation the same rights as the author of an original work, provided such translation can, under the provisions of this law, be published without the author's consent, and subject to the right of any other person to translate the same original work.

During the period when the translation cannot be published without the author's consent, a translator having such consent, has the rights of an author in his translation, subject to any restrictions imposed by the agreement with the author.

Publishers of periodicals.

Art. 5. The publisher of a periodical or other work composed of distinct articles by different authors, is considered as an author, but has no right to reproduce such articles separately. One year (*b*) after the publication of each article the author may reproduce the same.

Duration.

Copyright lasts for the life of the author and fifty years after his death. In a joint work, not consisting of several distinct articles, the fifty years begin to run from the death of the last surviving author. (Art. 7.)

Corporations.

Works published by learned societies or other associations, also works first published after the death of their author, are protected for fifty years (*c*) from date of first publication; and the same with regard to anonymous and pseudonymous works,

(*a*) This clause as finally modified by the law of 29th April, 1904, conforms with the provisions of the Berne Convention. This law applies to writings published before the date of its coming into force (1st July, 1904) with a saving for rights acquired previously.

(*b*) Counting from the 1st January after publication. (Art. 21.)

(*c*) Counting from the 1st January following publication. (Art. 21.)

the authors of which, however, on making themselves known before the expiration of the fifty years, either upon the title-page of a new edition or by declaration with the Minister of Justice, or by triple insertion in the official 'Gazette,' acquire the full period of protection. Until the author so discloses his identity, he is represented in the exercise of his right, by the person designated on the title-page as the publisher. (Art. 8, as modified by the law of 28th May, 1879.)

Works published in parts.

In the case of writings published in several parts or connected divisions, the period of protection runs from the beginning of the year of publication of the last part. If one part has been published more than two years (*a*) after the preceding part, the period of protection for that and earlier parts runs from the year in which the last of the previous parts was published. (Art. 9. A new clause under the law of 28th May, 1897.)

Registration.

There are no provisions as to registration in this law.

Alienation of copyright.

An author can transfer to others the rights given him by this law with or without conditions or restrictions. Failing such transfer, the right passes to his heirs at his death.

The person to whom an author grants the right to publish a work may not publish more than one edition of it, nor more than 1000 copies in that edition. (Art. 6.)

Piracy and infringement.

It is forbidden as piracy, but subject to any provisions to the contrary in this and in the law on the liberty of the press, to print any work, in whole or in part, before the expiration of the term of copyright, without the consent of the owner of such copyright. Changes, abbreviations, or additions of no importance to a work, do not legalize such piracy.

Piratical translations.

The publication of a translation of an unprinted work, without the consent of the author, or of a translation contrary to Arts. 2 and 3, is an act of piracy. (Art. 10.)

What is not piracy.

It is no piracy to reproduce passages from another work in a new and original work, whether in full or abridged, for purposes of proof, criticism, or illustration, provided the source be acknowledged. The reproduction of passages, or even a whole writing, if of short length, in a collection composed of extracts intended for religious purposes or elementary instruction, or for historic exposition, is no piracy, nor is printing words as the libretto of a musical composition. But when the writing of another is taken for profit, the author must be quoted when his name is given in the original work. Neither is it piracy to reproduce in a periodical publication extracts

(*a*) Counting from the 1st January following publication. (Art. 21.)

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from another periodical, provided the source be acknowledged. But scientific articles and *ouvrages d'esprit* of considerable extent are excepted, if the reservation of copyright be expressed at the head.

Representation of dramatic and musical works.

No dramatic or musical dramatic work, either in the original or in a translation which may not be published without the author's consent, can be publicly represented without the consent of the author or his representative. But the reading or public performance of a work is permitted if there be no scenic accompaniments, unless the work be unpublished or there be a reserve of the right of public performance on the copies of the work. An authorized translator exercises, in respect of his translation, the author's rights.

The person having a right of public representation may give as many representations as he likes, but may not transfer his privilege to another.

The proprietor of such work may grant the same authorization to others if there be no agreement to the contrary. When a proprietor has granted the exclusive right of representation to another, and such grantee has failed to make use of his privilege for five consecutive years (*a*), the proprietor is again at liberty to grant the right of representation to others. (Art. 13, as modified by the law of 1897.)

Duration.

The above rights of the author or translator in respect of representation last for his life and thirty years (*b*) after his death. If the author or translator has not disclosed his identity the representation is open to any one at the end of five years from the first representation or the first publication. (Art. 14.)

Remedies.

Persons guilty of piracy under this law are liable to a fine, to confiscation of pirated copies, and to make compensation in respect of copies sold, or in case of infringement of dramatic or musical rights, to pay over the gross proceeds of the representation to the proprietor of the copyright. If it is impossible to assess the damages on the basis mentioned, the amount is to be determined on equitable considerations, but the minimum damages are to be twenty-five crowns.

General provisions.

When there are several proprietors of a work the consent of each is necessary for publication or representation. However, in the case of a musical dramatic work the consent of the author suffices if the text forms the principal part, and of the composer if the music forms the principal part.

(*a*) Dating from 1st January after the last representation. (Art. 21.)
(*b*) Reckoned from the 1st January following death. (Art. 21.) The period was life and five years until the law of 29th April, 1904, was passed.

Artistic copyright in Sweden is now governed by another law of 28th May, 1897, replacing the earlier law of 3rd May, 1867. The law of 25th May, 1897, provides:

Artistic copyright.

Art. 1. No one can reproduce original works of art for purposes of sale during the author's life without his consent, when the process of reproduction belongs to the same branch of art as the original. Reproduction is not made lawful, by being in a different size, or in different materials, or with non-essential changes, so long as by its subject and contents it retains the character of a copy.

Art. 2. Every person has the exclusive right of causing the reproduction, in whole or part, for sale or public exhibition original works executed by him by printing, photography, casting, or other analogous means. This right lasts till the end of the tenth year after the artist's death, and can be assigned, with or without conditions or restrictions.

Art. 3. Reproduction is permissible in a scientific journal or a journal intended for instruction, provided the source be acknowledged.

Art. 4. If a work of art be sold, the artist or his representatives do not lose their rights, unless the sale be to the State or a Commune. A commissioned portrait may not be reproduced by the artist without the authority of the person who has given the commission. The provisions of this clause may, however, be raised or negatived by agreement.

Art. 5. Works of art exposed in public places or outside buildings may be reproduced (*a*).

The penalties and remedies provided by this law are similar to those provided in the case of infringement of literary copyright.

The law came into force on the 1st January, 1898, and is retrospective in its operation, subject to existing rights. All works of art acquired by the State or Communes before the 1st January, 1898, can be freely reproduced. (Art. 13.)

Photographs were not protected in Sweden before the passing of a third law of 28th May, 1897:

Photographs.

Art. 1. Copyright for five years from the year of publication is granted to a photographer in respect of a photograph, but in order to obtain protection every copy of the photograph must

(*a*) The analogous clause in the repealed law of 3rd May, 1867, gave liberty to reproduce works of art belonging to the State or Communes. By Art. 13 this right is preserved in the case of works of art acquired before 1st January, 1898. As to the meaning of a "public place," reference to the decisions under the similar clause in the Swiss law (*post*) may be useful.

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have indicated upon it the name and address of the photographer and the year of first publication.

Art. 2. Reproduction is permissible in a scientific or educational work; but it must bear the same indications as provided in the last clause.

Art. 3. In the case of commissioned photographs (*a*), the copyright vests, in the absence of agreement to the contrary, in the person who gives the commission, and the photographer cannot reproduce it during the period of protection.

Similar penalties are provided by this law for infringement as in the cases of infringement of literary and artistic copyright.

This law came into force on the 1st January, 1898, and is not retrospective.

Rights of Foreigners.

Rights of foreigners.

The three laws of 28th May, 1897, apply to literary, artistic, and photographic works of foreigners published for the first time in Sweden, and on condition of reciprocity may, by royal ordinance, be extended to works of foreigners published abroad.

The recent revision of the Swedish copyright law has been made with a view to enabling Sweden to join the Berne Convention, and her adherence may be confidently expected before long. The copyright treaties affecting Sweden have been mentioned under Norway.

DENMARK.

Law of 19th Dec., 1902.

Literary and artistic copyright are governed by the recent law of the 19th December, 1902, which is very similar to the Norwegian law of 1893, and repealed all previous laws on the subject, except one of the 24th March, 1865, as to photographs. This law came into force on the 1st July, 1903, and is retrospective in its operation, saving existing rights. Its chief provisions are as follows (*b*):

Literary copyright.

Art. 1. Within the limits of this law, an author has the exclusive right of publishing his writings by manuscript copy, reproduction by mechanical or chemical process, dramatic or mimic representation, recitation, or any other reproduction used to help language; but in case of published works the

(*a*) Not confined, apparently, to portraits.

(*b*) Taken from the French translation in 'Le Droit d'Auteur,' 1903. The law has been recently amended in matter of translations by the law of 29th March, 1904.

right of public reading or recitation not of a dramatic character must be expressly reserved.

Art. 2. An author has the like rights in respect of (a) speeches (*a*); (b) musical compositions (including the right of public performance—except as to dances, songs, or short isolated pieces or parts of larger works—if the composer expressly reserves these rights on the title-page or at the head of the published work); (c) mathematical, geographical, topographical designs, technical and other designs, which cannot be considered as works of art.

Art. 3. The publishers of journals, periodicals, and other works containing contributions from various authors, have the copyright in the entire work, but, in the absence of stipulation to the contrary, the author of a particular contribution if a distinct work preserves his copyright in the same.

Art. 4 (as amended by the law of 29th March, 1904). A work may not be translated, without the author's consent, from the language in which it is written into a dialect or *vice versâ*, Danish, Swedish, and Norwegian being considered dialects of the same language. In any other case no translation may be made without the proprietor's consent for a period of ten years reckoned from the end of the year of publication. When, before the expiration of that period, a work shall have been published in several languages no translation may be afterwards published in any of such languages without the proprietor's consent. In the case of works published in parts, this period is reckoned from the publication of the final part, but if the work consists of several volumes published at intervals, each volume is treated as an independent work. Translations.

Art. 5. Translations are protected as original works.

Arts. 6 and 7 deal with the rights of collaborators *inter se.*

Art. 8. Laws, ordinances, decisions of the courts, and other public documents are not the subject of copyright, nor are written or oral debates of constitutional, municipal, ecclesiastical, or other public assemblies.

Art. 9. Copyright may be assigned in whole or in part. Assignment for the purpose of publication in a particular manner does not imply a right to publish in another manner, nor does it include the right to dramatize or to authorize translations or adaptations. The assignee may not publish in a modified form, without the author's consent, and a publisher has, in the absence of contrary agreement, the right to publish one edition only. Assignment of copyright.

(*a*) But see Arts. 8 and 13.

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Art. 10. Any one to whom is granted the right of public performance of a dramatic or musical work may, in the absence of contrary agreement, exercise his right when, and as often as he pleases, but he may not cede the right to others. In the like absence of agreement, the author may grant similar rights to others. In any case, and even if he has granted the exclusive right, the contract becomes void if no representation has been given for five years.

Art. 11. On an author's death his copyrights devolve according to the ordinary rules of law, and in the case of unpublished works the author may forbid, by will, their publication for a period not exceeding fifty years.

Art. 12. Unpublished works are protected from the author's creditors.

Infringements.

Art. 13. Besides reproduction of the entire work, abridgments, enlargements, or alterations, including dramatizations and adaptations, are piracies, unless they result in the production of an essentially new and original work. But advertisements (*anmeldelser*) or succinct reports cannot in any case be infringements of the author's rights.

Art. 14. The following are not piracies: (a) insertion of detached fragments in a work constituting, on the whole, an original work; (b) utilization of detached fragments, two years after the end of the year of first publication, in reading and scholastic books; (c) reprinting, as the text of musical compositions or upon concert programmes, detached pieces of music of short length, to be used at the public performance of musical works; (d) reprinting poems and fragments of prose of short length to explain artistic illustrations, provided the illustrations are the essential parts of the work, and that at least two years have elapsed since the first publication of the work taken. In all these cases the source must be acknowledged.

Art. 15 (as amended by the law of 29th March, 1904). Newspapers and reviews may copy from others articles or detached communications, acknowledging the source, provided the copyright be not specially reserved, and the matter taken be not a serial story, or novel.

Penalties.

Art. 16. Piracies, whether printed in Denmark or abroad, are liable to confiscation or, in case good faith is proved, to sequestration during the period of copyright.

Art. 17. The person who wilfully or negligently reproduces or imports piracies, or who knowingly sells, distributes, or hires the same, is liable to a fine of 100 to 2000 crowns and to pay damages.

Art. 18. Likewise unlawful public representation of musical and dramatic works, done wilfully or intentionally, is visited with a fine and payment of damages.

Art. 19. If the defendant proves good faith, he is only liable to pay over his profits.

Art. 21. The period of protection is the life of the author and fifty years after his death. In the case of collaborations, the fifty years dates from the death of the survivor. Duration.

Art. 22. Anonymous or pseudonymous works and works belonging to institutions and scientific societies are protected for fifty years from the end of the year of first publication, but the author of an anonymous pseudonymous work can obtain the full period of protection by revealing his identity in the prescribed manner, before the fifty years have elapsed.

Art. 23. In the case of works published in parts the fifty years run from the publication of the last part, unless more than three years elapse between the parts.

Art. 24. Within the limits of this law an artist enjoys the exclusive right of making or authorizing reproduction of his original works of art for publication or sale, whether the reproduction implies artistic faculty or is merely mechanical or chemical. Artistic copyright.

No one may, without the consent of the interested artist, utilize for an architectural work original architectural designs, or designs, models, &c., which have been executed from the original designs.

Art. 25. Lawful reproductions of original works of art enjoy protection as original works.

Art. 26 relates to the rights of collaborators *inter se.* The consent of all is required for publication or reproduction of the work.

Art. 27. An artist may assign his copyright, but in the absence of contrary stipulations, the transfer of a work of art does not include the right to publish reproductions, the artist retaining this right. Nevertheless portraits may not be reproduced without the consent of the person represented or his relatives. When a work of art has been published in a journal or periodical, the artist, in the absence of contrary agreement, has the right to publish in any other manner. Assignment.

Art. 30. A reproduction is not rendered lawful by reason that it is of different size or materials from the original, or that it has been reproduced from a reproduction, or by reason of modifications, additions, or curtailments, unless an essentially new work is produced. Infringement.

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Art. 31. It is not piracy to reproduce detached works of art, in connection with letterpress and with the object of explaining it, in works of criticism and artistic history, or in press reports of events of general interest; but the name of the artist must be mentioned. Views of streets or public places (*a*), or the interior or exterior of buildings containing reproductions of works of art, are not piracies unless a protected work of art constitutes the principal object of the picture.

Art. 32. Arts. 16, 17, and 19 apply to infringements of works of art.

Duration.

Art. 33. Works of art are protected for the life of the artist and fifty years after his death, to be reckoned, in the case of collaborations, from the death of the longest liver.

Art. 34. In the case of anonymous and pseudonymous works, the publisher named on the work is *primâ facie* authorized to protect the author's interests.

Photographs.

Photographs are protected by the law of the 24th March, 1865, for five years. All copies must bear the author's name and the words "exclusive property." A declaration must be made at the Department of the Interior, and a copy deposited. Where a photograph is executed to order, the consent of the person giving the order is necessary for the acquisition of copyright and sale of copies. Actions for infringement can only be brought by an injured party and within a year and a day. Persons infringing, or selling or importing pirated copies, are liable to fine, and to indemnify the injured person. Implements used in making the infringement will be confiscated.

Rights of Foreigners.

Rights in the absence of treaty.

Article 36 of the law of 19th December, 1902, provides that that law shall apply to the works of foreigners published by a Danish publisher. The same article also provides as follows:

"Under condition of reciprocity, the provisions of the present law may be rendered applicable, in whole or in part, by royal ordinance, to works produced by the subjects of other countries, even if those works are not published by a Danish publisher. But no reciprocal arrangement involving pecuniary obligations can be concluded without the authorisation of the Diet."

Under treaties and conventions.

On the 19th June, 1903, Denmark adhered to the Berne Convention, the Additional Act of Paris, and the Interpretative Clause, the adherence to take effect from the 1st July, 1903 (*b*).

(*a*) See cases decided under Article 11 of the Swiss law of 1853, *post*.

(*b*) The British Order in Council giving effect to this adherence in the British dominions is dated 9th October, 1903.

Denmark has also been proclaimed entitled to the benefits of the Chace Act in the United States (Proclamation dated 8th May, 1893); and she has treaties with France and with Sweden and Norway.

SPAIN.

Literary copyright.

Copyright in Spain is now regulated by the new law on intellectual property, the draft of which was reported on to the Cortes on 4th January, 1877, and finally promulgated on the 10th January, 1879, replacing previous laws of 1834 and 10th June, 1847. The term of copyright before the passing of the new law was for the life of the author and fifty years after his death.

What protected.

The new law protects all scientific, literary, and artistic works which are capable of being published by any means whatsoever (*a*). (Art. 1.)

Persons protected.

The persons protected are authors, translators (*b*), persons who (with the permission of the author, if the work is Spanish) recast or copy original works, or make abridgments, epitomes, or reproductions of original works, publishers (*c*) (Art. 2), musical composers, authors of scientific charts, plans or drawings, authors of works of art, and the legal representatives of all these people, also the State and its corporations, and provincial and municipal corporations, scientific, literary, artistic, and other institutions. (Arts. 3 and 4.)

Anonymous and pseudonymous works.

The publishers of anonymous and pseudonymous works have the rights of authors and translators. But on proof of the identity of the real author or translator, such author or translator may regain his rights of ownership. (Art. 26.)

Intellectual property is governed by the common law, without other limitations than are fixed by that law. (Art. 5.)

Newspapers.

Proprietors of newspapers may assimilate their publications to literary works, by annually presenting three complete files to the Registry of Intellectual Property. (Art. 29.)

Works published in periodicals.

The authors of works published in periodicals have the right to publish such writings in a collected shape either

(*a*) Under the Regulation of 3rd Sept., 1890, works protected include all those produced or published by process of writing, drawing, printing, painting, engraving, lithographing, photographing, or any kind of impression or reproduction known now or subsequently invented.

(*b*) Translators if the original work is foreign and no international treaties forbid, or if it is Spanish, if the work has become public property, or with the consent of the author.

(*c*) Publishers of unpublished works without known proprietor, or of an unpublished work, the author of which is known, but which has become public property.

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selected or complete, unless there be an agreement to the contrary. Writings and telegrams published in periodicals may be reproduced in all other publications of the same kind, if the original publication does not carry at the head or foot of the article that reproduction is forbidden: in every case the source must be indicated. And the author or translator of various literary works may publish all or some of them in a collected shape, even after he has sold one of them to a third party. (Arts. 30–32.)

Lectures.

The author of lectures read in the royal academies or before any other corporation, may publish them in a collection or separately. Academicians have the same power in the case of other literary works brought out with the approbation or by the direction of such academies, except such works as belong indefinitely to any of these bodies as being intended for special and constant instruction at such academy (*a*). (Art. 32.)

Duration of copyright.

Intellectual property belongs to authors for life, and is transmissible to their heirs-at-law or testamentary heirs for eighty years. It is also transferable by donation *inter vivos*, and belongs to the purchaser during the life of the author, and eighty years after his death, if he does not leave heirs of necessity. If he does leave such, the right of the purchaser expires in twenty-five years after the death of the author, and the property passes to such heirs for a period of twenty-five years. (Art. 6.)

Posthumous works are those which have not been published in the life of the author, or having been so published, have been left by the author at his death altered, enlarged, annotated, or corrected in such a manner that they deserve to be treated as new works. If this be disputed before the courts, the question shall be submitted to experts. (Art. 27.)

Laws, &c.

Laws, decrees, orders in council, rules, and other provisions issuing from public authorities can be inserted in papers and other works, where it is proper, by reason of their character or object, to cite, comment on, criticise or copy them verbatim, but no one may publish them separately, or in a collected form, without the express permission of the Government. (Art. 28.)

Infringement.

No person may reproduce another's works without permission, not even for purposes of annotation, augmentation, or improvement, but any person may publish as his exclusive property commentaries, criticisms, and notes referring to the

(*a*) This is said and seems to imply that such institutions possess perpetual copyright.

works of others, inserting only so much of the text as is necessary.

In the case of a musical work this prohibition extends also to the total or partial publication of melodies, with or without accompaniment, transposed or arranged for other instruments, or with different words, or in short arranged in any other form than that published by the author. (Art. 7.)

The publication of works is not a necessary condition of legal protection. Consequently no one may without permission publish a scientific, literary, or artistic production, which has been taken down in shorthand, noted or copied during the reading, performance, or exposition, public or private, of such production. This applies to verbal explanations. (Art. 8.)

The alienation of a work of art, in the absence of agreement to the contrary, does not carry with it the right of reproduction, or the right of exhibiting the work publicly: these rights remain reserved to the author or his representative. (Art. 9.)

To be able to copy or reproduce, in the same or reduced dimensions, by any means, original works of art in public galleries during the life of the author, his consent must first be obtained. (Art. 10.)

Parliamentary speeches.

The author is the owner of his parliamentary speeches, which cannot be reproduced without the permission of himself or his representative, except in the Annals of the Chamber (*diario de la sessiones*) of which he is a member, and in political newspapers. (Art. 11.)

Foreign translations.

If a translation be first published in a foreign country, with which there exists a treaty on intellectual property, the stipulations of the treaty shall be consulted in order to solve questions which may arise. This law shall apply to cases unprovided for by the treaty. (Art. 12.)

Art. 13. The owners of foreign works, the claim to protection of which is established in conformity with the laws of their country, shall also enjoy copyright in Spain; nevertheless they shall only enjoy the exclusive right of translation of these works as long as the right of translation of the original works is reserved to them in their own country by the laws thereof (*a*).

Art. 14. The translator of a work become public property, only enjoys the right of property in his translation and cannot oppose the work being translated afresh by others (*a*).

(*a*) The translation of this section is taken from the French translation published in 'Le Droit d'Auteur.' It differs slightly from the translation published by M. Lyon-Caen.

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Art. 15. The rights conceded in Spain by Article 13 to the owners of foreign works shall only apply to nations who treat owners of Spanish works with complete reciprocity.

Arts. 16 to 18 relate to the publication of documents used in legal proceedings. The consent of the court and of the parties interested must be obtained.

Dramatic and musical works.

No dramatic or musical work can be represented in whole or in part in any public place whatsoever, without previous consent of the author or his legal representative. This article applies to representations given by societies receiving any pecuniary contributions whatever. The rate of remuneration must be fixed by the author at the time of giving such consent, otherwise he must accept the scale fixed by government. (Art. 19.)

No one may, without the author's permission, make a copy of an unprinted dramatic or musical work after representation in public, nor sell or hire out such copy. (Art. 21.) In a musical dramatic work half the profits belong to the author of the libretto, and the other half to the author of the music. (Art. 22.) The author of the libretto and the composer of the music have each the right of publishing separately their part of the work. If the author of the libretto interdicts all representation, the composer may apply the music to a new dramatic work. (Art. 23.) Societies and private persons who give representations of such a work may not change its title in announcing it, or make changes or additions without consent of the author. (Art. 24.) The unauthorized representation of a dramatic or musical work in any public place is, independently of the penalties prescribed by the code, punished by the loss of the entire receipts, which must be handed over to the author of the work. (Art. 25.)

Duration.

The duration of the right of representation is the same as that of copyright in works of literature.

Works of art.

The law of copyright in works of art is the same as for literary property, but no registration or deposit is necessary in general for works of painting, sculpture, and the plastic arts.

Registration and deposit.

Art. 33. A general register of intellectual property shall be kept at the Ministry of Agriculture, &c. (*Fomento*).

Registers are also to be opened in the provincial libraries, or, if there be none, in the libraries of the Establishments of Secondary Education in provincial capitals. In these registers there shall be entered chronologically the scientific, literary, or artistic works presented for registration; also

engravings, lithographs, architectural designs, geographical or geological maps, and all artistic or scientific designs.

Three signed copies of each work must be deposited. Half-yearly lists of the entries made, and the subsequent alterations must be sent to the General Department of Education to form the general register. (Art. 34.)

There is no charge for registration. Duty on assignments is to be fixed by the law. (Art. 35.)

Registration is essential to protection except in the case of works of art, and must take place within a year, but protection dates from the day of publication.

In the case of manuscript musical or dramatic works which have been publicly performed, it is sufficient to deposit a single manuscript copy of the literary portion and a manuscript copy of melodies with musical accompaniment (*a*). (Art. 36.)

Art. 38. If a work be not registered, it may be republished or reprinted by the State, scientific bodies or private persons, during a period of ten years from the failure to register. *Forfeiture.*

Art. 39. If at the end of this period, the author or his representative fails to register it within a year, the work becomes public property.

Art. 40. Works not republished by the owner for a period of twenty years become public property, and may be published by the State, scientific bodies, and private persons without alterations, but no person can prevent others from publishing.

Art. 41. A work shall not become public property even after the lapse of twenty years in the following cases:

(1) A manuscript dramatic, lyrical dramatic, or musical work after public performance and deposit at the registry.

(2) When the proprietor proves that he has exposed copies for public sale during the twenty years.

Art. 42. For a work to become public property under Art. 40, notice must first be given at the registry, and the government must then summon the owner to reprint it within one year.

Art. 43. In the case of works published in successive parts, the periods fixed by Arts. 38, 39, and 40, shall run from the completion of the work.

Art. 44. The provisions of Arts. 38, 39, and 40 are not operative, if the author, being still the proprietor, before the

(*a*) By Royal Decree of 31st Jan., 1896, registration is rendered not essential but optional in the case of foreign works.

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expiration of the periods mentioned, declares in solemn form his wish that the work should not be delivered up to publicity.

A like right is given to his heir, on condition that he acts in agreement with a family council to be held in manner prescribed.

Penalties.

Art. 45. The responsibility for infringements of intellectual property, committed by publication of works subject to this law, in the first place falls on the person convicted of being the author, on his default on the publisher and printer successively, subject to proof to the contrary.

Art. 46. Infringers incur in addition to the penalties fixed by Art. 552, and the corresponding provisions of the Penal Code in force, the loss of all copies illegally published, which are to be handed over to the injured owner.

Art. 47. The preceding article is applicable:

To persons reproducing in Spain works which are private property, first printed in Spanish in a foreign country.

To persons who falsify the title or frontispiece of any work or print on it that it has been published in Spain, when really published in a foreign country.

To persons who imitate titles so as to produce, in the opinion of the court, confusion between an old and a new work.

To persons who import from foreign countries pirated works, while at the same time defrauding the custom house; the fiscal liability remains in addition.

To persons who by any of these means injure foreign authors, when there is reciprocity between Spain and their country of origin.

Art. 48. The following are considered aggravations of infringement.

Altering the title or text of a work, with a view to publication.

Reproduction in a foreign country, if followed by introduction into Spain, and still more if there is an alteration of the title or text.

Jurisdiction.

Art. 49. The ordinary courts are to apply these provisions so far as they are competent.

Governors of provinces, or where there are none, alcades may on the request of the owner of a dramatic or musical work restrain the performance of the work, or order the deposit of the receipts, in cases where this is sufficient to protect the property in the work.

But if the receipts are not sufficient, the interested party may take proceedings before the courts with jurisdiction.

Transitory provisions.

Art. 52. Without prejudice to rights acquired under former laws, this law is to apply (1) to works commenced to be published after the promulgation of the law; (2) to works not then become public property; (3) to works become public property, but regained by authors, translators, or their heirs, under the provisions of this law.

Art. 53. The extension of duration given by this law shall be enjoyed by authors of works of every kind and their heirs, and also by purchasers subject to the terms of Art. 6.

Art. 56. The law becomes effective in Cuba and Porto Rico in three months, and in the Philippine Islands in six months from its date (*a*).

Penal Code of 1870.

By the Penal Code of 1870, it is provided that every punishment for an offence shall carry with it the loss of articles acquired by the offence, and of the instruments serving to commit it.

Both shall be confiscated unless they belong to an innocent third party.

The confiscated articles shall be sold, if they can be lawfully, and the receipts shall be applied in making good the liabilities incurred by the offender: if the articles cannot lawfully be sold, they shall be rendered useless.

Art. 552 provides that persons committing a fraud in the matter of literary and trade property shall incur the penalties indicated in Art. 550 (*b*).

Rules (*Règlement*) for the execution of this law were published on the 3rd September, 1880.

These rules gives further definitions of authors and owners, and contain provisions as to official documents, as to the particulars of registration, and particularly as to theatres and dramatic and musical work, at too great length (*c*) for insertion in the present work, but are of considerable importance. A royal decree of the 4th August, 1888, has modified Rule 101, and further royal decrees relating to this law were issued on the 11th June, 1886, 14th July, 1888, 15th June, 1894, and 11th July, 1894.

Important circulars in reference to the law of the 10th January, 1879, and the Rules of the 3rd September, 1880, were also addressed to the Provincial Governors on the 29th May, 1883, the 2nd January, 1889, the 13th January, 1891, and the 21st March, 1891.

(*a*) As to copyright in these islands now, see United States, *post*.
(*b*) This includes fine and imprisonment.
(*c*) A full translation of these rules is to be found in 'Lois françaises et étrangères,' par M. Lyon-Caen, and also in 'Le Droit d'Auteur,' 1890, pp. 44 and 58.

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Royal decrees relating to the execution of the law in the Spanish Indies were issued on the 27th April, 1887, the 5th May, 1887, and the 6th December, 1889 (*a*).

Rights of Foreigners.

Provisions of law of 10th Jan., 1879.

In addition to Articles 12 to 15 and Articles 47 and 48 above referred to, the law of 10th January, 1879, contains the following clauses relative to the rights of foroigners (*b*):

Art. 50. Persons within the jurisdiction of States which concede to Spaniards the right of intellectual property according to the terms of this law, shall enjoy in Spain the rights conferred by this law without the necessity of any treaty or diplomatic interference, by means of private action before the competent tribunal.

Art. 51. The government shall within a month determine the existing treaties in literary property with France, England, Belgium, Sardinia, Portugal, and Holland, and endeavour to conclude new treaties with as many nations as possible, in accordance with this law and on the following bases: (1) Complete reciprocity; (2) mutual obligation of the most favoured nation treatment; (3) an author properly entitled in the one country to have the same right in the other without any now formalities; (4) the unauthorized printing, sale, importation and exportation of works written in the language or dialects of the other country to be forbidden in either country.

Treaties and Conventions.

Spain has adhered along with her colonies to the Berne Convention and the Additional Act of Paris and the Interpretative Clause. In the year 1900 she published her adhesion to the Convention of Montevideo, but this adhesion has, so far, only been accepted by the Argentine Republic and Paraguay. On the 10th July, 1895, the United States issued a proclamation according to Spain the benefit of the Chace Act, Spain having declared her willingness to grant to citizens of the United States the rights enjoyed by Spanish citizens, although it is not easy to see how the Chace Act fulfils either condition 1 or condition 3 of Art. 51 of the Spanish law (*c*). Spain has also treaties in force with the following

(*a*) These decrees and circulars are all to be found in 'Le Droit d'Auteur.'

(*b*) According to a Royal Decree of 19th May, 1893, authors or publishers of works written in Spanish and printed abroad in this language who propose to import them into Spain should forward to the Director-General of the Ministry of Public Education, at [illegible] along with their request, three copies of the work, with a bibliographical [illegible]

(*c*) The arrangement with the United States, suspended during the Spanish-

countries (*a*): Belgium, 26th June, 1880; France, 16th June, 1880; Italy, 28th June, 1880; Portugal, 9th August, 1880: San Salvador, 23rd June, 1884; Columbia, 28th November, 1885; Costa Rica, 14th November, 1893; Guatemala, 25th May, 1893. A treaty concluded with Mexico dated 10th June, 1895, was denounced by the latter country; but a new treaty was concluded on 26th March, 1903.

PORTUGAL.

Literary copyright in Portugal was formerly regulated by the law of the 8th July, 1851, the provisions of which were given in the 2nd edition of this work: this law was repealed by the law of the 1st July, 1867, which contains a number of provisions on this subject, Part II., Book I., chap. ii., Articles 570–612 (*b*).

Literary Work in general.

Art. 570. Any one may publish in print, or by lithography, scenic, or any analogous art, a literary work, of which he is the author, without previous censorship, giving of security, or other restriction hindering the free exercise of this right, but subject to his legal liabilities. Right to publish a literary work

This article is applicable to the right of translation.

Art. 571. Any person may publish laws, regulations, and other official decrees, if already published by the government, on condition of adhering accurately to the authorized text. Laws.

Art. 572. The preceding article includes speeches made in *les chambres législatives* or any others delivered officially. But the collection of the speeches or a determinate part of the speeches of an orator cannot be made, except by him or his authority. Speeches.

Art. 573. The lectures of masters and public professors and sermons, cannot be reproduced in their entirety by any other than the author without his authority. This prohibition does not extend to simple extracts. Lectures and sermons.

Art. 574. A manuscript is the property of the author, and cannot in any case be reproduced without his consent. MSS.

American War, has been re-established by a formal declaration by the State Department at Washington, following an exchange of notes (29th Jan., 18th and 26th Nov., 1902).

(*a*) See note (*a*), *ante*, p. 557.

(*b*) Translation taken from the French translation published in 'Lois françaises et étrangères,' par M. Lyon-Caen.

PART VI. PORTUGAL.

Art. 575. Private letters cannot be reproduced without the consent of the author or his representative, except in connection with legal proceedings.

Duration.

Art. 576. The Portuguese author of a work of literature published by printing, by lithography, or any other analogous process, on Portuguese territory, enjoys during his life the ownership of his work and the exclusive right of reproducing and disposing of it.

(1) Nevertheless authors may quote from one another and copy articles or passages which they think useful to reproduce, on condition that they indicate the author or the book or periodical from which the quotations or extracts are taken.

(2) Articles originally appearing in periodicals or forming part of a combined or collective work, can be reprinted by their authors if there is no agreement to the contrary.

Translation.

Art. 577. The right of translation is included in the rights mentioned in the preceding article. But if the author be a foreigner, he only enjoys this right in Portugal for ten years from the publication of his work, and on condition that he commences to put this right in force within three years from such date.

(1) In case of transfer, all the author's rights pass to the translator, subject to any agreement to the contrary.

(2) The translator, Portuguese or foreigner, of a work which has become public property, enjoys for thirty years the exclusive right of reproducing his translation, without prejudice to the right of any other person to translate afresh the same work.

Heirs of author, copyright for fifty years.

Art. 579. After the death of an author his heirs, representatives, or assigns, enjoy the rights treated of in Art. 576 for fifty years.

Art. 580. If the State or a public institution publishes a work at its expense, it enjoys such right for fifty years from the publication of the volume or part which completes the work.

If such work consists of a collection of writings or memoirs on different subjects, the fifty years run from the publication of each volume.

Works in collaboration.

Art. 581. Where there is more than one author of a work, and each of them has collaborated on the same terms and in his own name, the property in the work belongs

to all the co-authors, and the first period of the duration of this property extends to the death of the last surviving collaborator, the proceeds to be shared by him with the heirs of the deceased collaborator, and the second period commences from his death.

If a collective work, in which several have joined, has been undertaken, edited, and published by a single person, the second period referred to in this article commences from the death of such person.

Art. 582. The provisions of the preceding articles as to authors apply to publishers to whom the property in the works have been transferred, subject to any agreements.

However, in this case the period mentioned in Art. 579 counts from the death of the author.

Anonymous works.

Art. 583. The provisions relating to works published in the author's name apply both to anonymous and pseudonymous works as soon as the identity of the author, his heirs, or assigns, is known and proved.

Art. 584. The addition given by Art. 576 to the period of copyright after the death of the author (which period was less under the previous Code) is for the benefit of the author's heirs, although the author may have alienated the copyright in whole or in part.

Art. 585. The publisher of a posthumous work of a known author enjoys copyright for fifty years from publication.

Art. 586. The publisher of an unpublished work, the proprietor of which is not yet known and has not obtained legal recognition, enjoys copyright during thirty years from the completion of publication.

Expropriation.

Art. 587. Where the edition of a work already published is exhausted, and the author or his heirs are unwilling to reprint it, the copyright may be expropriated although the work has not yet become public property.

The State alone can expropriate copyright, and on condition that it obtains a law authorizing the same, that it previously compensates the author, and further, that it adheres to the general principles of expropriation for reasons of public utility.

Publishers' rights and obligations.

Art. 588. The publisher of a work, whether unpublished or already published but not become public property, cannot alter or modify the text during the life of the author or his heirs; and he must keep on the work the title chosen by the author and the latter's name, in the absence of agreement to the contrary.

PART VI. PORTUGAL.

Art. 589. A publisher who has contracted to publish a work must, in the absence of agreement to the contrary, commence the publication in the year following the date of the contract and carry it on regularly, under penalty of paying damages to the person interested under the contract.

A publisher who has contracted for successive editions of a work cannot break off the publication, unless he shows that there exists some insurmountable obstacle to a ready sale of the work.

General provisions.

Art. 590. Literary property is to be considered and regulated as all other personal property, subject to the modifications imposed by the law in consideration of its special characteristics.

Art. 591. On failure of heirs the State does not succeed to copyright; any one may publish and reprint in such a case, subject to the rights of creditors on the inheritance.

Art. 592. Literary property cannot be prescribed.

Art. 593. There is no property in literary works forbidden by law and ordered to be withdrawn from circulation.

Dramatic Copyright.

Dramatic works.

Art. 594. Besides literary copyright in their works as established in the preceding articles, dramatic authors enjoy the following rights.

Art. 595. No dramatic work can be represented in a public theatre where admission is paid for, without the written consent of the author, his heirs, assigns, or representatives, as follows:

(1) If the work be printed this consent is only necessary after the death of the author, during the period for which his heirs, assigns, or representatives enjoy copyright.

(2) If the work be posthumous, the work cannot be represented without the consent of the heir or the owner of the manuscript.

(3) Permission for the representation of a dramatic work may be unlimited, or limited to a certain period, to certain countries, or to a certain number of theatres.

Art. 596. Where a limited permission has been granted, if the work be represented at an unauthorized theatre, the net profits belong to the person whose permission was necessary.

Art. 597. The author's share of receipts cannot be seized by a creditor of a theatre manager.

Art. 598. A dramatic author who has agreed for the repre-

sentation of his work enjoys the following rights, unless he expressly renounces them:

To make such changes and corrections in his work as he may judge necessary, provided he does not alter any essential part without the consent of the manager of the theatre.

To require that the work, if in manuscript, shall not be communicated to any person outside the theatre.

Art. 599. An author who has agreed with a manager for the representation of his work cannot, during the existence of the agreement, grant in the same locality to another manager the right of representing either the work itself or an imitation of it.

Art. 600. If the piece has not been represented within the time agreed, or if no agreement in this respect be come to within a year, the author may withdraw his work.

Art. 601. All disputes between authors and managers are to be brought before the civil courts.

Artistic Property.

Artistic property.

Art. 602. The author of a musical work, a drawing, a painting, a sculpture or engraving, has the exclusive right of reproduction of his work by engraving, lithography, moulding, or any other process in conformity with the regulations laid down for literary property.

The provisions in favour of dramatic authors in the preceding section contained are wholly applicable to the authors of musical works, in respect to the performance of their works in theatres or other places where the public are admitted on payment.

Some Obligations common to Authors of Literary, Dramatic, and Artistic Works.

General provisions.

Art. 603. In order to enjoy the benefits given by this law, the author or proprietor of a work reproduced by typography, lithography, engraving, moulding, or any other process, must observe the following provisions.

Registration.

Art. 604. Before the publication of a literary work is effected by the circulation of copies, two copies must be deposited at the Public Library of Lisbon. The librarian is to give a receipt for this deposit, which is to be entered on the register without payment.

If the work be dramatic or musical, or if it relate to dramatic literature or musical art, the deposit and registration must be made as aforesaid in the Conservatoire Royal of Lisbon.

PART VI. PORTUGAL.

If the work be a lithograph, an engraving, or a casting, or if it treat of any of these arts, the deposit and registration must be made as aforesaid in the Academy of Fine Arts at Lisbon. But the author may deposit the original drawings instead of the two copies.

Art. 605. The Public Library and the other institutions named in the last article, must publish monthly the registrations respectively made in the official journal.

Art. 606. Certificates from these registers are *primâ facie* evidence of title to the work with the results flowing therefrom, subject to proof to the contrary.

Liability of Pirates or Infringers of Literary and Artistic Property.

Piracy, punishments for.

Art. 607. Infringers of the rights recognised and secured by this law are liable, within the following limits, for the infringements committed by them.

Art. 608. Any person who publishes an unpublished work, or reproduces a work already published or in course of publication belonging to a third party without his authority or consent, shall forfeit to the author or proprietor of the work all copies of the fraudulent reproduction which are seized, and shall pay in addition the value of the whole edition less such copies at the sale price of lawfully issued copies, or at their estimated value.

If the number of copies fraudulently printed and circulated be unknown, the pirate shall pay the value of 1000 copies in addition to those seized.

Art. 609. Any person who sells or exposes for sale a fraudulently printed work, shall be jointly and severally liable with the publisher, within the limits indicated in the preceding article: if the work has been printed out of the kingdom, the vendor shall be responsible as if he were the publisher.

Art. 610. Any person who publishes a manuscript in which there are private letters, without the permission of their author, during his life or during the life of his heirs or representatives, shall be liable in damages.

This provision is without prejudice to the power granted by Art. 575 with reference to private letters.

Art. 611. The author or proprietor of a work fraudulently reproduced may, as soon as he becomes aware of the fact, demand the seizure of the reproduced copies, without prejudice to his action for damages which he is entitled to bring even if not a single copy has been found.

Art. 612. The provisions of this section relating to civil remedies are without prejudice to criminal proceedings, which may be instituted by the author or proprietor against the pirate or infringer.

Criminal proceedings.

The provisions of the Criminal Code on Piracy are contained in the Penal Code of 1886, Arts. 457–460, of which Art. 459 relates to infringement of patent rights:—

Art. 457. Any person who commits the offence of piracy by reproducing fraudulently and in violation of the law relating to copyright, in whole or in part, a work of literature or music, of drawing, painting or sculpture, or any other production, shall be punishable by a fine of 30 to 300 milreis (*a*) and forfeiture of the copies of the pirated work and all the implements which have been used in the piracy.

The same fine with the loss of copies shall be applicable in the case of any person who introduces on Portuguese territory a work produced in Portugal which shall have been pirated in a foreign country.

Any person who sells or exposes for sale a work thus pirated, shall be condemned to a fine of 10 to 100 milreis and the loss of pirated copies.

Art. 458. Any theatre proprietor or manager, or any society of artists representing in his or their theatre a dramatic work, or performing a musical composition in violation of the law of copyright, shall be punishable with a fine of 10 to 100 milreis and the loss of the receipts.

Art. 460. In the cases provided for in the preceding articles the proprietor injured by the offence shall receive by way of compensation the confiscated articles and receipts; and if further injured he may recover by the ordinary methods of procedure.

The law of copyright and the Penal Code are both in force in the Portuguese colonies.

Rights of Foreigners.

Art. 578 of the law of 1st July, 1867, provides that a foreigner shall enjoy in Portugal the same rights as a Portuguese writer if in the foreigner's country Portuguese writers enjoy the same rights as natives; but in practice this provision is rendered nugatory by reason of the necessity for registration *before* the publication of a literary, dramatic, musical, or artistic work. (Arts. 603, 604.) Further, a foreign author's rights in the matter of translations are curtailed by Art. 577 above set out.

Rights of foreigners.

(*a*) Milreis—about 4*s.*

PART VI. PORTUGAL.

Portugal has not joined the Berne Convention, but she has entered into treaties with the following nations: France, 11th July, 1866; Belgium, 11th October, 1866; Spain, 9th August, 1880, and Brazil, 9th September, 1889 (*a*). By Proclamation, dated 20th July, 1893, Portugal has been declared entitled to the benefit of the Chace Act in the United States.

ITALY.

Early legislation.

Previously to 1865, the different states of which the present kingdom of Italy is composed had each their own legislation on copyright, but in that year the Italian government passed the law of the 25th June, which still forms the basis of the law of Italy on this subject. The law was extended to Venetia on the 30th June, 1867, and to Rome on the 30th November, 1870.

On the 16th August, 1875, the law relating to dramatic works was passed, which considerably modified the preceding laws by extending the duration of copyright in such works.

However, inconveniences were felt from this double legislation, and by a law of the 18th May, 1882, the government was authorized to unite and codify the two laws of 1865 and 1875, with some modifications. This was accordingly done by a royal decree of the 19th September, 1882, and on the same day a regulation was issued for the due execution of the law.

Author's rights.

Under the present law, which came into force on the 1st August, 1885, the authors of works of the intellect (*b*) (*œuvres de l'esprit*) have the exclusive right of publishing and reproducing them, and of selling their reproductions (*c*). (Art. 1.)

Art. 2. The following are equivalent to the publication reserved to the author:

The printing or any other similar method of publication of (1) extempore addresses, lectures, or verbal instruction, although delivered in public and reproduced by shorthand or otherwise; (2) of works or compositions suitable for public representation.

The representation or performance of a work suitable for

(*a*) These treaties can all be found, translated into French, in a collection recently published by the International Copyright Office at Berne. The treaty with Spain is more favourable to authors than that with either France or Belgium, but the treaties with these latter countries do not contain most favoured nation clauses.

(*b*) Price lists and catalogues will not be protected. Milan, 10th Dec., 1895, *Prada* v. *Della Torre*.

(*c*) The translation, &c., is chiefly taken from the French translation of M. Theurault, published in 'Lois françaises et étrangères,' par M. Lyon-Caen.

public representation, *d'une action chorégraphique* or any musical composition whether published or unpublished.

The composition of a work of art from an author's sketches.

Speeches delivered in public meetings on subjects of political or administrative interest, and especially those delivered in Parliament, can be freely published and reproduced in the reports of the sittings and in the newspapers. But they cannot be reproduced either as a special publication of one or several speeches of an individual, or as part of a collection of his works.

Art. 3. The following are equivalent to the reproduction reserved to the author:—

The repetition of the representation or performance, in whole or in part, of a work suitable for public representation, *d'une action chorégraphique*, and of any musical composition, already publicly represented or performed from the manuscript.

The adaptation for different instruments, extracts from and adaptations of musical works or parts of such works, except where a motif of an original work has been used as the theme or occasion of a musical composition which is in itself a new work.

Change of proportion in the parts or forms of a work of the draughting arts.

Change of material or process in copying a design or picture, a statue, or any other work of the same kind.

Art. 4. The exclusive right of selling a work includes the right of stopping, in the kingdom, the sale of reproductions made in a foreign country without the consent of the author.

Art. 5. When the exclusive right of publishing, reproducing, or selling a work belongs jointly to several persons, it is presumed till the contrary is proved that they each have an equal share, and each can exercise the entire right with power to the others to obtain compensation for their share. Joint works.

In case of alienation, the assignor and the assignee are jointly and severally liable to pay this compensation, if the assignee knew that the right granted belonged jointly to several persons.

Art. 6. The author of a libretto or any composition set to music cannot deal with the right of reproduction and sale of the music, but the composer of the music can reproduce that and sell it with the words to which the music is written. In such case, the author of the words has a right to the compensation given in Art. 5 to a joint author.

PART VI. ITALY.

Collective works.

Art. 7. The publication of a work composed of distinct parts, but arranged together in such a way as to form a single work, or a collection with a special purpose, confers on the person who has conceived it the exclusive right of sale and reproduction.

Nevertheless, each of ,the authors of one of the parts composing publications of this kind possesses his rights over his own work, and can reproduce it separately on condition of indicating the work or collection from which it is extracted.

Duration.

The provisions as to duration of copyright in Italy are peculiar. Articles 8 and 9 are as follows:

"*Art.* 8. The exercise of the author's right over the reproduction and sale of a work begins at its first publication and lasts for the life of the author, and forty years after his death, or for eighty years in conformity with the provisions of Art. 9.

"Successive editions of a work, although increased or modified, do not form a new work.

"And the right of reproducing the added or modified parts terminates at the same time as that of reproduction of the entire work.

"*Art.* 9. The right of reproduction and sale belongs exclusively to the author during his life. If the author die before the lapse of forty years from the first publication of the work, his heirs or representatives enjoy the copyright for the remainder of that period: this first period having come to an end in one or other of the ways above indicated, there then begins a second period of forty years, during which the same work may, subject to certain regulations, be reproduced and sold without the consent of the proprietor thereof, but on condition of paying to him 5 per cent. on the published price of each copy, which price must be plainly printed on each copy, and declared according to the form prescribed in Art. 30. The debt hereby created is privileged and a first charge upon the copies reproduced."

The effect of these two articles is to create two distinct periods of copyright. The first period lasts for the life of the author or forty years, whichever shall be the longer. During this period the author has the exclusive copyright. The second period begins when the first period comes to an end and lasts for forty years. During this second period the author has not the exclusive copyright, but any one may reproduce his work, subject, however, to the obligation to pay the author 5 per cent. on the published price of each copy (*a*).

(*a*) Any one availing themselves of this liberty must not alter the original work, and, in particular, must not alter the principal exterior elements of the work, such

By Article 12 of the same law the author has the exclusive right of authorizing translations of his works for ten years from the date of their first publication (*a*). A translator has the same rights as an author. (Art. 13.) Translations.

The translation of literary and scientific works consists in putting them into another language.

By Article 11, the State, the provinces, and communes have copyright in works published at their expense and on their behalf. The right lasts for twenty years from publication. It does not apply to laws and official documents, saving such rights as may belong to the administration on grounds of public interest.

A like right in collections of their proceedings and other publications belongs to academies or other analogous scientific, literary, or artistic societies, and the author of any separate articles published in such works has the rights specified in Art. 7 (2). Works of academies and public bodies.

Art. 15. The periods commencing from publication run from the year when the publication of the last part of the work has taken place. Time.

In the case of works published in several volumes, the periods are reckoned for each volume, if the volumes are not all published in the same year.

No account is taken of fractions of years.

Art. 16. An author may alienate his rights, but a mere authorization to publish a work does not transfer the copyright. In such case the judge is to fix a period during which any new reproduction shall be forbidden. (Art. 19.) Assignment.

Execution cannot generally be made on copyright while it belongs to the author. Execution and expropriation.

Art. 18. The assignment of a mould, engraving plate, or any other article forming an ordinary means of publication or reproduction of a work of art is considered to include the right of publication or reproduction unless the contrary is stipulated, and provided this right belongs to the possessor of the article assigned. Assignment of plates, &c., for reproducing works of art.

The assignment of one or more copies of any work does not carry with it the right of reproducing it in the absence of express agreement.

Art. 20. Copyright may with the exception of the right of publication during the life of the author be acquired by the State or any province or commune by expropriation on public grounds. Expropriation.

as the cover, the frontispiece, and the date. Milan, 23rd Dec., 1896, *Carrara* v. *Sonzogno*. (See Art. 30.)

(*a*) The Italian courts have held that public performance is not publication.

PART VI. ITALY.

The declaration that public grounds exists is to be made at the instance of the Minister of Public Education, with the consent of the Council of State.

Compensation is to be paid.

Method of recording Publication.

Registration.

Art. 21. Any person wishing to avail himself of the rights secured by this law, must deposit not more than three copies of his work (*a*), or an equal number of copies made by photography or some other process sufficient to identify the work. The author must append a declaration in which after precisely specifying the work, and the year of publication, he shall state his desire to reserve his rights as author or publisher.

Art. 24. The separate volumes of works published in several volumes shall be deposited, if they are not all published in one year.

In the case of periodical works, the publication of which is continued without fixed limit, and in the case of magazines which are published in a course of years, a deposit shall be made every year of the part published in that year.

Art. 25. The obligation of declaring and depositing a work published in parts, or each one of the volumes composing a work, commences at the date of publication of the last part or volume to be deposited.

Newspaper articles.

Art. 26. Any person who publishes a work either all at once or in successive articles, in a newspaper or any other periodical publication, must declare, at the head of the work, or of the first article, that he intends to reserve the copyright.

In the absence of declaration, other papers or periodical publications may reproduce the work, on condition of indicating the source and name of the author, but no person may publish it separately.

When the author or other person entitled to copyright means to publish his work separately, he must make the deposit and declaration prescribed by Art. 21, giving accurately the date of the commencement and termination of the publication made first in a paper or in any other periodical. If the work so published is in several volumes, he must state the year in which was terminated the first publication of the part contained in each volume separately printed, as he makes the successive deposits.

(*a*) One copy at least under the Regulation of the 19th Sept., 1882.

Art. 27. The declaration and deposit must be made within three months of the publication of the work or its different parts, or from the first representation of works intended for public representation, *des actions chorégraphiques*, and musical compositions.

A declaration and deposit made after this time shall be equally valid, unless, during the period elapsing between the expiration of the said three months and the actual date of deposit, a third party has reproduced the work or introduced copies from a foreign country for the purpose of sale.

In such case the author cannot prevent the sale of copies already printed or imported.

The courts are to determine any disputes arising on this provision.

Art. 28. If the declaration and deposit be not made within ten years, the copyright is considered to be abandoned.

Art. 29. Extracts of the declarations made, whether within the prescribed time or not, are to be published monthly in the Official Gazette.

Conditions of sale by third parties.

Art. 30. A person wishing to exercise the power given by Art. 9 (2) must deliver to the prefect a written declaration stating his name and address, the work he wishes to reproduce, the mode of reproduction, the number of copies and the price to be marked on each; he must add a clear offer to pay to the persons who prove themselves entitled thereto a royalty equal to $\frac{1}{20}$ of the price multiplied by the number of copies.

These declarations must be inserted at least twice, at an interval of fifteen days, in a paper appointed for judicial announcements in the place where reproduction is to be made, and in the Official Gazette.

At the end of every three months, a list is to be prepared of the declarations made during that period, which are to be published after those mentioned in the preceding article.

Art. 31. In the case of disputes between the persons interested as to the annulment, alteration, or transfer of declarations already made, the court is to decide the disputes in a summary way agreeably to recognised rights, and to the regulations established by this law.

The government, at the request and expense of the persons interested, are to publish in an appendix to the last publication of declarations, all annulments, alterations, or transfers ordered by the court, as well as those agreed to.

Piracy.

Art. 32. Any person who publishes a work without the consent of the author, is guilty of illegal publication.

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It is accounted piracy (1) to reproduce in any manner a work over which the author's exclusive rights still extend, or to sell such reproduction without his consent; (2) to omit the declaration prescribed by Art. 30; (3) when any person produces and sells a greater number of copies than his agreement with the author allows; (4) to translate without consent any work during the period for which the right of translation is reserved to the author.

Not piracy.

Art. 40. The reproduction of a generic title is not an offence of piracy, nor the reproduction of one or more fragments of a work, when it is not made with the evident intention of reproducing part of the work of another for profit (*a*).

Articles of political argument when reproduced for the purposes of discussion, or to justify or rectify opinions already expressed on the subject, and articles of news inserted in the papers or other periodicals, may be reproduced if the source be indicated. But the reproduction of the insertions mentioned in Art. 26 constitutes the offence of piracy when it is prohibited.

Remedies.

Infringers are liable to pay penalties and damages. Pirated copies and implements for producing the same may be ordered to be destroyed or delivered to the owner of the copyright for a fixed sum in reduction of damages. In the last year of copyright destruction will not be ordered, but sequestration during the unexpired portion of copyright. (Arts. 33–39.) Fines are also imposed for omitting to make the declaration required by Art. 30, without prejudice to the right to damages. (Art. 41.) Incorrect and false information in the declarations prescribed by Arts. 21, 23, 26, and 30 is also punishable with a fine. (Art. 42.) Criminal proceedings are to be taken officially. (Art. 35.)

Art. 45. Government expenses may be defrayed by royalties not to exceed 10 francs.

Art. 46. This law is retrospective.

Art. 47. Copyright entirely extinguished at the coming into operation of this law (1st August, 1885) cannot be revived.

But if copyright still exists in any province the author, if he have not assigned, or his representative by succession, may claim the benefit of the new law and its extension to the whole kingdom, after deducting the period elapsed since publication, for the residue of the period.

If the copyright has been assigned for a fixed time, and the

(*a*) It has been held that compilers of anthologies, chrestomathies, and works of a like character must obtain the consent of the authors.

period of protection accorded by this law has not then expired, the author or his representatives may resume their right for the remainder of that period.

The purchaser, on the other hand, takes the benefit, if the assignment was for an indefinite time or he was expressly given the benefit of any prolongation.

To obtain the benefits of this provision, an express declaration must be made within three months of the coming into force of this law that it is desired to take the benefit of it, the declaration to be in the form prescribed by Art. 21.

Dramatic and Musical Works.

Duration.

Art. 10. The right of public performance of a work proper to be publicly performed, of an *action chorégraphique*, and of a musical composition falls into the public domain eighty years after the first performance or publication.

Dramatic and musical works.

Art. 14. No one may represent or perform a work intended for public representation, a choregraphical action, or a musical composition of which the copyright is secured under Art. 2, without the consent of the author or his representatives. Proof of the consent in writing duly witnessed must be presented and left with the prefect of the province who, in default of this proof and on demand of the party, must prohibit representation or performance (*a*).

Deposit of MSS. in case of dramatic and musical works.

Art. 23. The declarations in respect of works suitable for public representation, choregraphical actions, and musical compositions, not published, the exclusive right to the publication or representation of which is desired to be retained, must be accompanied by a manuscript of the work, which will be returned after the presentation has been duly signed.

Copies of musical works must also be deposited, and in all cases it is necessary to state whether the work has been publicly represented before publication, and to give the date and place of such representation.

The composer of a musical work can prohibit the taking of any extracts from or making arrangements or variations of his work.

Artistic copyright.

In works of art the duration of the copyright is the same as in works of literature, and the other provisions relating to works of literature apply.

Art. 13. The translator of a work of art has the same right

(*a*) An official circular, dated 20th July, 1885, to the prefects enjoins them to be diligent in the performance of their duties under this article and reminds them that no special form of demand by the owner of the copyright is necessary for prohibition.

PART VI. ITALY.

as the translator of a literary work when the translation constitutes a new work of art, according to the provisions of Art. 12.

Under Art. 12, the translation of works of drawing, of painting and sculpture, engraving and analogous productions, consists in reproducing the forms or figures by some process not simply chemical or mechanical, but constituting another work of art differing in its nature from the original, as the engraving of a painting, the drawing of a statue (*a*).

Photographs.

It will be noticed that this law makes no provision as to copyright in photographs, yet there seems to be no doubt that some photographs are protected. The position seems to be similar to that in France and Belgium, viz., photographs are only protected if they be artistic (*b*).

A circular by the Minister of Public Education, dated the 6th August, 1893, declares that the reproduction by photography of monuments exposed in public places is free to all the world, but, with this exception, monuments of art, fixed or movable, belonging to the State, or antiquities preserved in the artistic, scientific, or literary State institutions, may only be photographed after permission from the authorities by whom these monuments or antiquities are guarded (*c*).

By the regulations of the 19th September, 1882, further details as to registration are prescribed and forms of application are given (*d*).

Rights of Foreigners.

Provisions of the law of 1882.

Article 44 of the law of 18th May, 1882, which is identical with a provision in the earlier law of 25th June, 1865, is as follows:

"This law applies to authors of works published in a foreign country with which there is no treaty, provided that that country has laws giving authors copyright to a greater or less extent, and that these laws are reciprocally applicable to works published in Italy.

"If reciprocity be promised by any foreign country to other countries on condition that they assure to authors of works published in the first country the same rights and securities as those recognized by its laws, the government is authorized to accord both by royal decree on condition of reciprocity,

(*a*) Do photographs come within this provision?
(*b*) See an article by M. Henri Rosmini in 'Le Droit d'Auteur' for 1889.
(*c*) 'Le Droit d'Auteur,' 1894, p. 81. (*d*) *Ibid.* 1895, p. 90.

provided they be limited in time and do not differ essentially from the rights and securities given by this law.

"If deposit or declaration at the time of publication be prescribed by law in a foreign country, proof that either of them has been made according to such law shall be sufficient to obtain for the work there published copyright in Italy.

"If no formality be prescribed, the deposit and declaration prescribed by this law may be effected either in Italy or with Italian consuls in a foreign country" (*a*).

Treaties and Conventions.

Italy was one of the original signatories to the Berne Convention and she has ratified the Additional Act of Paris, with the Interpretative Clause. On the 31st October, 1892, the United States proclaimed Italy to be entitled to the benefits of the Chace Act, but this proclamation was preceded by an exchange of notes between the two countries, by which the right for either country to denounce the arrangement between them was expressly reserved. This reservation was due to the feeling in Italy against the manufacturing clause in the Chace Act. Italy has also adhered to the Convention of Montevideo, but only the Argentine Republic and the Republic of Paraguay have assented to this adhesion. The following countries have special treaties with Italy: Germany, 20th June, 1884; Austria, 8th July, 1890; Colombia, 27th October, 1892; Spain, 28th June, 1880; France, 9th July, 1884; Mexico, 16th April, 1890; Montenegro, 14th November, 1900; San Marino, 28th June, 1897; Sweden and Norway, 9th October, 1884.

REPUBLIC OF SAN MARINO.

How far works are protected in.

There is no distinct law of copyright in this country, but in the treaties with Italy, dated 22nd March, 1862, and 27th March, 1872, respectively, the Republic bound itself to prevent, within its dominions, any reproduction of works of literature or art published in the kingdom of Italy. This engagement has been repeated in the more recent treaty of 28th June, 1897, but with an enlargement, for the Republic thereby undertook to prevent not only piracies of works

(*a*) Art. 3 of the Italian Civil Code admits foreigners to the enjoyment of the civil rights of natives without any limit or conditions, but the above article is evidently in derogation of this. The last paragraph of Art. 44 seems to give rise to difficulty. Italy is a party to the Berne Convention. If in a country of the Union no registration or deposit be required, must authors of that country register in Italy or with Italian consuls? On the whole, it would seem not; for Art. 44 appears only to apply to countries having no treaties with Italy, and it is submitted that the Berne Convention is such a treaty, and by Art. 2 of the Berne Convention it is provided that compliance with formalities (if any) prescribed in the country of origin shall be sufficient.

PART VI. SWITZERLAND.

published in Italy, but also of all works which are protected in that kingdom. Under this treaty, therefore, British and other foreign works entitled to protection in Italy would appear to be also entitled to protection in San Marino.

SWITZERLAND.

Copyright in Switzerland.

Up to the passing of the law of the 23rd April, 1883, the law of copyright in Switzerland was laid down by a concordat entered into by fourteen separate cantons and approved 3rd December, 1856, by the Federal Council.

On the 23rd April, 1883, a uniform law for all Switzerland was promulgated, repealing all contrary provisions of the laws and cantonal orders, and in particular the concordat of the 3rd December, 1856; its provisions are as follows:

Art. 1. Literary and artistic property consists in the exclusive right of reproduction or performance of literary or artistic works (*a*). The right belongs to the author and his representatives.

A writer or artist who works on behalf of another writer or artist is considered to have ceded to the latter his copyright, in the absence of contrary agreement.

Literary property includes the right of translation.

Duration.

Art. 2. Literary and artistic copyright lasts for the life of the author and thirty years after.

Posthumous works.

In the case of a posthumous work or a work published by the confederation, by a canton, by a corporation or society, the duration is thirty years from publication.

The right of translation can only be claimed by the author or his representatives, if exercised within five years.

Translations enjoy by the same title as original works the protection of this law.

Registration.

Art. 3. Posthumous works and those mentioned in Art. 2, par. 2, must be entered in a duplicate register kept at the Federal Department of Commerce within three months.

No formalities are necessary in the case of other works, but authors may register for their convenience.

The payment for registration must not exceed two francs.

(*a*) There is no definition of a 'literary work' or an 'artistic work.' It would seem, however, that a work to be protected must be original and intellectual. An arithmetic book is entitled to protection, but not necessarily every part of it (Tribunal fédéral, 13th Nov., 1899). Likewise maps and plans may be the subject of copyright (Cour de Justice de Genève, 21th Jan., 1903), but not a railway-guide (Tribunal fédéral, 30th Nov., 1894).

The federal council is to issue rules for the due execution of this article (*a*).

Art. 4. The federal law on obligations governs questions relating to agreements between authors and publishers of literary and artistic works (*b*).

Work of art, right of purchaser of.

Art. 5. In the absence of contrary stipulation, the purchaser of a work of the fine arts cannot reproduce the work till the copyright has expired.

But in the case of a portrait or half-length portrait to order, the right of reproduction passes with the work.

Portrait.

The author or his representatives cannot disturb the possession of the proprietor of the work in order to exercise their right of reproduction.

Architecture.

Art. 6. In the absence of agreement to the contrary, the purchaser of architectural plans can have them carried out.

Musical and dramatic.

Art. 7. The alienation of the right of publication of dramatic, musical, or dramatic-musical works, does not carry with it the right of performance, and *vice versâ*.

The author of a work of this kind can make the right of public representation or performance depend on special conditions, which in such case should be published at the head of the work.

But the percentage must not exceed 2 per cent. on the gross receipts. When the payment of a percentage is assured, the representation or performance of a work already published cannot be restrained (*c*).

Art. 8. The provisions of this law apply to geographical, topographical, natural history, architectural, technical, and other analogous drawings.

Photographs.

Art. 9. Photographic and other analogous works are admitted to the benefits of this law on the conditions following:

(*a*) Regulation issued 28th Dec., 1883.

(*b*) Code Fédéral of 1882.

(*c*) It would be idle for us to attempt a construction of this clause, when the Swiss commentators are at hopeless variance as to its effect. We can only mention some of the problems to which it gives rise: Does the article include unprinted musical works, or can the owner of music in manuscript fall back on Art. 1 and restrain the performance of his music, even if the percentage is offered? What are the nature of the "special conditions" which must be published at the head of the work? Are they confined to "money" conditions, or must there be a reserve of the right of public performance? What is the effect of omitting mention of such conditions? How is the percentage to be "assured" to the proprietor? How is the person who proposes to perform to know beforehand what his "gross receipts" are going to be? Yet if the proprietor of the performing right is not satisfied with the assurance, can he prohibit performance? If numerous copyright pieces are performed at one concert, must 2 per cent. be paid in respect of each? So far as we are aware these problems all remain unsolved by the Swiss tribunals, except that we believe it has been held that only 2 per cent. is payable in respect of a single concert to be divided amongst the claimants. For a further restriction on the rights of proprietors of performing rights, see Art. 11 (x.) *post*.

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(*a*) The work must be registered according to Art. 3, par. 1.

(*b*) The duration of copyright is five years from registration. If it be a question of the reproduction of an artistic work not become public property, the duration shall be according to the agreement between the photographer and artist; in the absence of any stipulation, five years are to be the period, after which the artist and his representative resume all their rights.

(*c*) When a photograph has been executed to order, the photographer may not reproduce it in the absence of agreement.

The fact of taking a photograph directly from an original which has been previously photographed is not piracy.

Not infringements.

Art. 11. The following are not infringements of copyright in literary works:

(1) The reproduction of extracts or entire small pieces from literary or scientific works in critical notices, in works on the history of literature, or in collections intended for scholastic instruction, on condition that the source is indicated.

(2) The reproduction of laws, legal decisions, or deliberations of the authorities and the public reports of an administrative body.

(3) The publication of reports of public meetings.

(4) The reproduction, with an indication of the source, of articles extracted from newspapers or periodical collections, unless reproduction is formally forbidden by the author in the newspaper or collection; the reproduction of articles on political discussions appearing in the public newspapers cannot be forbidden.

(5) The reproduction of news of the day, even although the source be not indicated.

The following are not infringements of artistic copyright:

(6) The partial reproduction of a work belonging to the draughting arts, in a work of scholastic instruction.-

(7) The reproduction of works of art standing in or upon the streets or public places, provided that the reproduction is not in the artistic form of the original (*a*).

(*a*) In a case in which it was decided that the frescoes in the chapel of William Tell, which is closed on three sides but can be seen into from the street, could be reproduced by any one as being in a "public place," the Court of Cassation remarked that "the fundamental idea of this provision is that works of art which, from the manner in which they are erected or placed, form an integral part of the panorama of a town or landscape and which can be seen by any one upon public places or in public streets, have fallen into public domain" (*Benziger* v. *Schlumpf*, 20th July, 1899). The Swiss courts seem to consider the preposition "in" to belong to streets and "upon" to public places, so that it is not lawful to reproduce works of art standing on private property, though the public may have general access to a place from whence they can be viewed (Court of Cassation, 15th Dec. 1898, *Union Photographique* v. *Brunner*).

(8) The reproduction or carrying out of plans or drawings of buildings or parts of buildings already built, in so far as these buildings have not an artistic character.

The following are not infringements of dramatic and musical copyright:

(9) The insertion in a special collection intended for schools or churches, of small musical compositions already published, with or without the original words, on condition that the source be indicated.

(10) The performance or representation of dramatic, musical, or dramatic-musical works, organized without a pecuniary aim, even when admission is by payment to cover expenses or for a work of charity (*a*).

(11) The reproduction of musical works by musical boxes and other analogous instruments (*b*).

Arts. 12 and 13 deal with the penalties for infringements, which vary according to whether the piracy is committed knowingly or by gross negligence, or without gross negligence. In the former cases damages and fines are payable, in the latter only an injunction and payment of profits may be demanded. Imitation of the firm, name, or mark of the author may be visited with fine or imprisonment. Penalties.

Art. 16. As soon as proceedings are commenced, the judge may order any necessary provisional measures (provisional seizure, security, an injunction, &c.).

Art. 17. Neither civil nor criminal proceedings can be taken after the lapse of a year from the time when the author or his representatives knew of the piracy or reproduction and the name of the offender, and not in any case after five years from the day of the publication, representation, or putting on the market of the pirated work.

Art. 18. The judge may at his discretion, order confiscation of pirated works, both against the infringer, the importer, and the retailer, and also of implements specially intended for piratical purposes.

In the case of the performance or representation of a musical, dramatic, or dramatic-musical work, the judge may order confiscation of the receipts.

The products of these confiscations, or the confiscated receipts, may be applied in payment of the civil compensation adjudged to the proprietor.

(*a*) This clause seems to open a wide door to piracy. What are the "expenses" to cover which payment may be received?

(*b*) According to the commentators æolians and pianolas are not "analogous instruments."

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Art. 19. This law applies to all writings, works of art, dramatic, musical, or dramatic-musical compositions published or appeared before the coming into force of this law, even when such works have not by cantonal law enjoyed any protection against piracy, reproduction, or public representation.

Retrospective action.

The time already elapsed since publication shall be taken into account in calculating the period of protection.

But no proceedings, whether criminal or civil, under the present law can be founded on reproduction made before the coming into operation of this law; on the other hand, the sale of these reproductions after such date is not permitted, except under agreement with the author, or unless in default of agreement, the proprietor of these reproductions shall pay the compensation fixed by the federal courts.

Art. 20. The prolonged period of protection given by Art. 2, over the protection formerly given, is granted in favour of the author or his heirs; but not in favour of the publisher or any other assign. But if the period of protection provided by this law is on the other hand shorter than that provided by legal provisions previously existing, the rights acquired under such provisions still remain in force.

Art. 21. This law comes into operation on the 1st of January, 1884.

A regulation for the execution of this law was issued on the 28th of December, 1883.

Registers.

This provides for the keeping of two registers at Berne: one for works which must be registered, *i.e.*, posthumous works, works published by a canton, a corporation or society, and also works of photography.

Secondly, a register for other works of which the registration is optional.

The formalities to be exercised on registration, &c., are carefully provided for.

Foreigners may register if domiciled in Switzerland or if their works have appeared there, or if their country treats on the same footing works published in Switzerland. The Swiss Federal Code on obligations of 1882 contains special provisions relating to publishing agreements: Arts. 372 to 391.

Works of art belonging to Confederation.

A regulation of 3rd April, 1897, declares that no one may copy works of art belonging to the Confederation without authorization, and prescribes rules for obtaining such authorization.

Rights of Foreigners.

Article 10 of the law of 22nd April, 1883, is as follows:

Provisions of law of 1883.

"The provisions of this law are applicable to all works the authors of which are domiciled in Switzerland, no matter where the work has appeared or been published: also to works which have appeared or been published in Switzerland, the authors of which are foreigners.

"The author of a work made or published abroad who is not domiciled in Switzerland, enjoys the same rights as the author of a work made in Switzerland, if this latter be treated, in this foreign country, on the same footing as the author of a work made in the said country."

Treaties and Conventions.

Switzerland was the chief originator of the Berne Convention of 1886, to which she was an original party. She has also ratified the Additional Act of Paris and the Interpretative Clause. By a presidential proclamation, dated the 1st July, 1891, she was declared to fulfil the conditions necessary to entitle her to the benefit of the Chace Act, 1891: and she has a copyright treaty with Japan, dated the 10th November, 1896.

MONACO (PRINCIPALITY OF).

Law of 27th Feb., 1889.

Monaco joined the Berne Convention on the 30th of May, 1889, and by an ordinance of the 27th September, 1889, the Convention was ordered to be registered in the Superior Court, to the end that it might be fully carried into operation in the Principality. The English Order in Council of the 28th November, 1887, was on the 15th October, 1889, extended to Monaco.

Previously to the accession, namely, on the 27th February, 1889, a sovereign ordinance was issued for the protection of artistic and literary works (*a*), which has since been modified in some particulars by ordinance of 3rd June, 1896 (*b*). The law of 1889 provides that:

Art. 1. Literary and artistic copyright is to be placed under the protection of the law, and regulated as follows:

Definition clause.

Art. 2. Literary and artistic works include books, pamphlets, and writings of all kinds, dramatic or dramatic-musical works,

(*a*) 'Lois françaises et étrangères,' par M. Lyon Caen, from which work this translation is taken.

(*b*) The ordinance first referred to came into operation on 1st July, 1889, and is retrospective as to all works not then fallen into the public domain (Arts. 36 and 37).

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musical compositions with or without words; works of drawing, painting, sculpture, and engraving; lithographs, photographs, illustrations, and geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, and sciences in general; in short, every production of the domains of literature, science, and art, which can be published by any method of printing or reproduction.

Title I.—Copyright in Literary and Artistic Works.

Duration.

Art. 3. The author of a literary or artistic work has alone, during his life, the right of publishing or reproducing it, or authorizing publication or reproduction in any manner or form.

Art. 4. The author of a literary work has further the exclusive right of translation.

Art. 5. A duly authorized translator has the same rights respecting his translation as the author of an original work. But in the case of a work, the right of translation of which has become public property, he cannot oppose the same work being translated by others.

Dramatic works.

Art. 6. No dramatic or dramatic-musical work may be publicly performed or represented without the consent of the author (*a*).

Works of collaboration.

Art. 7. In the case of literary and artistic works created in collaboration and forming an indivisible whole, the exercise of the copyright is to be regulated by agreement. In default, no one of the collaborators can exercise his rights separately, power being reserved to the Superior Court to decide in case of disagreement, and to order such measures as it may think useful for securing the rights of each author.

A work composed of words and music is not to be reckoned indivisible. The author and composer each as to his own part may turn them to account separately by publication, translation, or public performance, but neither may enter into an agreement with a new collaborator.

Assignment.

Art. 8. Copyright can be transferred voluntarily or for value, and is transmissible by will or intestacy, in whole or in part, in conformity with the Civil Code.

Right of heirs

But in the case of assigns, heirs, irregular successors, and legatees, the duration is limited to fifty years from the death of the author.

(*a*) This rule originally applied to unpublished musical works, and required a reservation of copyright to be on copies of the works, but the article has been altered by the ordinance of 3rd June, 1896.

In the case of a work of collaboration, the commencement of this period, for the benefit of all persons entitled, is deferred to the death of the last survivor of the collaborators.

Posthumous works.

Art. 9. The proprietors, by succession or otherwise, of a posthumous work enjoy copyright for fifty years from the day of publication, but if they include the work in a new edition of works already become public property, they incur forfeiture.

Anonymous works.

Art. 10. The publisher of an anonymous or pseudonymous work is considered, as regards third parties, to be the author. If the author discloses his identity and proves his title, he resumes all his rights.

What are not an infringement.

Art. 11. The rights recognised to authors and their representatives by the preceding articles are subject to the following modifications:

(1) Articles in newspapers may be reproduced in the original or in translation, on condition that the source is indicated (with the author's name, if the article be signed) unless this is expressly prohibited by the authors or publishers (*a*).

(2) Literary and artistic works may be borrowed from and the part taken published, when the publication is for purposes of instruction, or has a scientific character or forms a chrestomathy (*a*).

(3) Art. 6 does not apply to musical performances occurring in civil and religious solemnities, or in the open air gratuitously to the public, nor to performances or representations for charitable purposes and duly authorized in this behalf by government.

Art. 12 (*b*). Literary and artistic works are not liable to execution so long as they have not been published or exposed to sale.

Art. 13. Nevertheless, figurative works of art are subject to execution when they have been exposed to public or private exhibition or their author has voluntarily ceased to keep them.

Art. 14. Alienation of a work of art does not carry, of itself, the right of reproduction, but in the case of a portrait or bust executed on commission, the right of reproduction passes with the alienation, in the absence of agreement to the contrary.

Art. 15. In no case is the proprietor of a work of art

(*a*) This clause is as modified by the ordinance of 3rd June, 1896.

(*b*) Articles 12 to 16 are new. Until 1896 authors had to comply with certain formalities before they could secure their copyright. The clauses requiring these were repealed by the ordinance of 3rd July, 1896.

PART VI. MONACO.

compellable to put it at the disposal of its author or his representatives to enable him or them to reproduce it.

Art. 16. The author of a literary or artistic work need not comply with any formality to enjoy the rights conferred by this ordinance.

Title II.—Offences against Copyright. Their repression and prosecution.

Piracy.

Art. 17. Every publication or reproduction, in whole or in part, of a literary or artistic work produced in bad faith in defiance of copyright, constitutes the offence of piracy.

In particular the following acts are prohibited under this head:

The publication of works known as adaptations, musical arrangements, and generally of passages taken from literary or artistic works, with variations, additions, or curtailments, which retain the characteristic features without presenting the character of a new original work.

But the fabrication and sale of instruments mechanically reproducing musical airs which are private property, do not constitute the offence of piracy (*a*).

Art. 18. The fraudulent application on a work of literature or music, or an object of art, of the name of an author, or any distinctive sign adopted by him to denote his work, is equivalent to piracy.

Remedies.

Articles 19 to 31 relate to the author's remedies for infringements. The infringer may be ordered to pay fines of varying amounts, also damages, and piracies may be confiscated. Foreigners must always give security before instituting proceedings.

Regulations.

The following regulations were prescribed on the 20th May, 1889:

Art. 1. A register is opened at the Secretarial Department for registration of the declarations required by Arts. 13 and 14 of the law of 1889 (*b*).

The register is established according to Form A. annexed, with an alphabetical index to be filled in daily.

Art. 2. The declaration must be in writing in the French language in duplicate according to Form B., and may be sent post free.

Art. 3. It must emanate from the author or his representatives, or the attorney of the rightful owner. In this last case

(*a*) Art. 3 of the Protocol to the Berne Convention.
(*b*) Now repealed.

the special authority must be appended to the papers, and specially mentioned in the register.

Nevertheless, neither the right of the person making the declaration nor the truth thereof is subject to any previous inquiry, and registration is made at the author's own risk.

Art. 4. In the case of works published in successive, but not periodical parts, a declaration must be made for each part appearing at a distinct time.

Art. 5. The performance of the prescribed formalities is shown by a certificate, Form C, appended to the foot of one of the original declarations, which is returned to the person making it.

The other original is preserved in the Secretarial Department with the papers, which ought to be appended.

Art. 6. Any person may consult the register and papers relating to a registration, and make extracts, which will be certified on request.

Rights of Foreigners.

Art. 33 provides as follows :

Foreigners.

The provisions of this law shall be applicable to the foreign author of a literary or artistic work, whether published in the principality or not, and his representatives, according to the rights which are or are not granted to subjects of Monaco by the laws and treaties, either of the country of origin of the foreign author, or the country of first publication, when that takes place out of the country of the author.

In this last case, if the first publication is made simultaneously in several countries, the foreigner's rights shall be measured by the laws which give the shortest period of protection.

Art. 34. A foreigner shall not be allowed to claim in Monaco more extended rights than those secured to subjects of Monaco by the laws of Monaco.

Art. 35. The rights of foreigners are only conditional upon the accomplishment, in the country of first publication of the work, of the conditions and formalities imposed by the legislation of that country, but in case of dispute a certificate by the competent authority that these have been complied with may be required (*a*).

Monaco, as we have already noted, is a party to the Berne Convention, and has also ratified the Additional Act of Paris

(*a*) This article is a modification of the article in the law of 1889, which only dispensed with formalities when such were imposed in the country of origin.

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and the Interpretative Clause. Her only treaty, concluded with France on 9th November, 1865, is now of secondary importance.

TURKEY.

Former and present law.

Before the year 1872 the copyright of authors was protected by two decrees of January 1850, and 19th April, 1857. The first applied only to authors paid by government, the second was general. These measures were very imperfect, and merely made a publisher liable to damages for issuing more copies of a work than had been agreed upon between himself and the author. The right was also reserved to the State of publishing any work which it should think proper to publish, on payment of an indemnity, the amount to be fixed by the State itself, to the author.

Law of 11th Sept., 1872.

In the year 1872, however, a copyright law was sanctioned by the Sultan. The provisions of this law are simple but comprehensive:

Art. 1. Every person may print every kind of book. All monopoly is suppressed.

Art. 2. By way of reward, and that his example may be followed, every author shall have the privilege for life of printing his works. No other person shall be able to print them up to the death of the author.

Art. 3. In case the author shall not be able himself to have his work printed, he shall have the right of selling by agreement his privilege of printing to any person whatsoever on such conditions and at such price as he may consider suitable.

Art. 4. The agreement for sale must be communicated to the Council of Public Education.

Art. 5. If the Government shall be of opinion that the printing of a work is necessary, the work shall be printed after the author has received a suitable remuneration through the said council.

Art. 6. Printing a larger number of copies of a work than has been agreed is forbidden. Accordingly any person who violates this provision, shall be considered purely and simply as a man who has committed a theft, and shall be punished by the penalties by the law prescribed against thieves.

The following additional articles were subsequently added:

Duration.

Every author shall obtain on request the privilege of restraining the printing and publication of his work by any other person for forty years from publication, and also of restraining the translation, without his permission, of his work on condition that he has expressly reserved the right of trans-

lation in the preface, on the cover, or in some other part of the work.

If the author die before the expiration of forty years, his privilege for the unexpired period shall pass like his other property to his heirs. The author or his heirs may assign their privilege in whole or in part. If the purchaser die before the expiration of forty years, he may transmit the privilege to his heirs for the unexpired period.

Translation.

The rights of a translator are identical with those of an author, except that the duration is for twenty years only. Then any other person may obtain the right of translating the same work.

When the State has bought from the author and translators of a work their privilege, or they have granted it to the State, the printing of the work shall not be authorized by the Ministry of Public Education before deposit at the Treasury of the sum fixed by the State.

Persons who print works of which the publication and printing are the subject of privilege, shall be prosecuted in accordance with Art. 241 of the Penal Code.

Punishment for offences.

Art. 241 of the Penal Code provides that a person is guilty of piracy who prints, or causes to be printed, books in defiance of the laws and regulations on the property of authors, or who shall prepare or cause to be prepared any article for which an exclusive privilege has been granted, whether to private individual or a society. Pirated works or articles shall be confiscated for the benefit of the author or possessor of the privilege, and the pirate shall be punishable with a fine of 5 to 200 médjidie (*a*).

The introduction on to Turkish territory of productions of this kind pirated in a foreign country, shall also be punishable with a fine of 5 to 100 médjidies, and the penalty against the person who knowingly sells them shall be a fine of 1 to 25 médjidies.

Further new regulations were added on the 28th March, 1875.

Special works.

Art. 1. A privilege of four years shall be granted to any one wishing to print works of large size, when the author or the owner of the privilege or their heirs are dead.

Art. 2. For a book to be considered as of large size and obtain this privilege, the entire work whether in one volume or in several parts or volumes must contain not less than 800 pages, and not less than thirty-seven lines to the page.

(*a*) Gold médjidie, worth about 18*s*.

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Privilege shall not be granted in the case of works not fulfilling these conditions.

Art. 3. Where (such) a privilege is demanded for a work containing plans, geographical charts, or artistic designs, the work must contain 200 pages of twenty-one lines, and fifty plates.

Art. 4. At the request of the persons who have obtained a privilege for such works, the works may be divided into such number of volumes or parts as they please.

Art. 5. When a work for which a privilege has been granted has not been completely published within a year and a half, by the act or omission of the possessor of the privilege, the privilege shall be annulled and may be granted to any other person requesting it. The original holder of the privilege may bring an action for damages against the printer, if the delay be caused by the act or omission of the latter.

Art. 6. On the death of persons who have obtained a privilege under these articles, their entire rights shall pass to their heirs.

Press Law.

By Article 19 of the Press Law of the 18th January, 1888, which repeals the earlier law of 1857, no work can be printed without the permission of the Ministry of Public Education. Immediately after printing, the printer must send written information of the title of the work and the number of copies printed to such Ministry.

Deposit.

Two copies of all printed works must before their publication be deposited in Constantinople with such Ministry, in the provinces with the local administration. The deposit must be accompanied by a declaration signed by the printer, giving the title of the book and the number of copies printed.

Rights of Foreigners.

Foreigners.

The above provisions only relate to works printed in Turkey and regulate the relations between natives or between natives and foreigners, which must be determined by the Ottoman tribunals alone. But as between two foreigners the consular jurisdiction may be invoked, and it would seem that copyright is capable of being protected in Turkey upon similar principles as in Egypt, the consular tribunal of the defendant's country being the competent tribunal (*a*). Turkey has no copyright treaties.

(*a*) See "Egypt," *post*, and 'Le Droit d'Auteur,' 1895, p. 165.

RUSSIA.

In Russia (except Finland) literary copyright is regulated by the Penal Code of 1832, and the ukases of 26th January, 1846, and of 7th May, 1857, which were reissued in 1887. Literary copyright.

Speeches and lectures are comprised in works of literature (*a*). Translations are protected like original works, and an author cannot prevent another person from publishing a translation of his work without the addition of the original text (*b*), but an exception is made in favour of authors of scientific works involving research. Such authors may reserve the right of translation but must make use of it within two years. What protected.

Private letters cannot be published without the mutual consent of the writer and receiver.

The copyright in musical compositions is the same as in literary works, and no musical composition can be arranged for or adapted to another instrument without the consent of the composer.

The first publishers of ancient manuscripts are protected.

Copyright lasts for the life of the author, and after his death is enjoyed by his heirs or assigns for fifty years. In the case of posthumous works this term only commences to run from the date of publication. Learned societies have the exclusive right of reproduction for fifty years from date of publication. Duration.

Authors must register their works in order to secure the copyright, but no deposit of a copy is required. Every assignment of copyright must be in writing (*c*). Registration.

The assignment of a work to a publisher gives him the right to publish only one edition, unless a stipulation to the contrary be expressly made. Five years after the Censure Office has authorized the sale of this edition, the author or his heirs may publish a new one. The author may also publish a new edition before the expiration of these five years if he has made changes in or additions to his work to an amount equal to two-thirds of the whole. The author of articles in reviews and periodicals retains the right to publish them in a separate form unless Assignment.

(*a*) There is no definition of this expression, and the whole law is loosely drafted and difficult to interpret. Articles on the Russian law are to be found in 'Le Droit d'Auteur' 1894 (p. 168) and 1897 (p. 99.) There is some prospect of a new law on copyright being promulgated in Russia before long, but at present the country is one of the happy hunting-grounds of the literary pirate.

(*b*) Court of Cassation, 30th Jan., 1891. A translation to be a piracy of the original work must be "consecutive and word for word"! (Art. 16). In practice, a Russian author does not attempt to prevent translations of his works, but only complains that the translator so often mutilates his work.

(*c*) The censorship law is also very strict.

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there be an agreement to the contrary. Manuscripts cannot be seized by creditors.

Remedies of the author against piracy.

No prosecution for piracy can take place except on the complaint of the injured party, and the complaint must be formulated within two years from the commission of the offence, or within four years if the plaintiff reside abroad. The trial is held in the courts of the province in which the defendant is domiciled.

Besides confiscation of pirated copies, damages may be awarded to the plaintiff in cases of piracy.

Penalties.

Any person guilty of the fraudulent publication in his own name of the work of another, or of selling a manuscript, or the right of publishing it, to several persons, was, by Article 742 of the Penal Code of 1832, liable to deprivation of his civil rights, to corporal punishment, and to transportation into Siberia in addition to the pecuniary penalties. But the Penal Code of 1857 does not contain this provision.

Dramatic and musical works.

There are no provisions regulating the right of representation of dramatic and musical works, except a special regulation of the 13th November, 1827, relating to dramatic pieces and operas admitted to the imperial theatres.

Artistic copyright. What protected.

The same laws which regulate literary copyright apply also to artistic copyright. Pictures, drawings, engravings, maps, statues, and other works of art (*a*) enjoy the same protection as works of literature. An architect's plans are also his property, and it is not lawful to construct a building on the lines of another designed by some one else.

Piracy.

It is unlawful to reproduce a picture or any part of it by the same process without the artist's consent, or to copy it by engraving or drawing.

A sculptor's work may not be reproduced by a cast, nor in marble, nor in the form of a medallion, nor by an engraving, so long as the reproduction is on the same scale as the original. A sculptor is not allowed to copy portions of the work of another sculptor in order to introduce them in his own work.

In any case a piece of sculpture may be reproduced by a painting, and *vice versâ*.

Works of art belonging to the government may be reproduced without consent of the artist.

The free use of works of art for application to industrial purposes is allowed by the law of 11th July, 1864.

Portraits and family pictures cannot be reproduced, even by the artist, without the consent of the owners.

(*a*) But not photographs.

All assignments of the right of reproduction must be in writing; on the death of an artist the assignee or legatee of the right of reproduction must give notice to the heirs within a year, or, if he reside abroad, within two years. Assignment.

When an artist assigns or bequeaths his artistic copyright in a work, or the work itself, the copyright passes completely to such assignee and his heirs; but if the work be of such a nature that it can be reproduced in a complete collection of the artist's works, the law reserves to him the right to insert it in such collection. Works of art may be sold to pay the artist's creditors, but in such case the copyright does not pass.

An artist in order to secure his copyright must, before publication, duly register it in his district with a detailed description. The fact of registration is then gazetted by the Academy of Arts. Registration.

Rights of Foreigners.

The only international protection expressly accorded in Russia is in respect of musical compositions (*a*), and that is of a very limited character. Musical compositions published abroad are protected only if they belong to authors of Russian nationality or resident in Russia. The protection accorded to other works published by Russian subjects abroad, or by foreigners in Russia, is uncertain, and is a question that appears never to have come before the Russian courts. Works published by foreigners abroad are not protected (*b*). Foreigners.

FINLAND.

A separate and distinct law was enacted for Finland on the 15th March, 1880, on the right of the author and the artist in the produce of his work.

CHAP. I.—*On the Right of Publication of Writings.*

Art. 1. The author of a writing has the exclusive right of reproducing it by printing or otherwise, and of publishing it for circulation, whether it exists only in manuscript or has been already published, and also of disposing of this right of publication by assignment or will. Literary copyright.

After the death of the author the right of publication, if it

(*a*) Art. 48 of *ukase* of 1887, 'Le Droit d'Auteur' 1894, p. 168

(*b*) This appears to be the construction placed by the Russian courts upon the law of 1887, though Art. 1 is quite general in its terms: "An author or translator has the exclusive right," &c.

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has not been transferred to any person, belongs to the widow and heirs, according to the law respecting matrimonial rights and successions.

Definition.

Art. 2. For the application of this law, the following are equivalent to writing: technical, geographical, topographical, natural history, and other drawings and pictures, which from their principal aim cannot be considered works of art; also musical compositions, plans of buildings and other architectural drawings, drawn by the author on his own account or to the order of another.

It is permissible to build from a published plan.

Duration.

Art. 3. In the case of published works, if the author has placed his true name on the title-page or any other usual place, the right of publication recognized by Art. 1 lasts during the author's life and fifty years after.

If the work has not been published in the life of the author, or if a published work does not bear the name of the author as aforesaid, the exclusive right of republishing lasts for fifty years after the first publication. When the author discloses his true name, during this period, on a new edition, or by a notice inserted three times in the general papers of Finland, the period fixed in par. 1 of this article applies also to a pseudonymous or anonymous work.

Joint works.

Art. 4. When several authors have jointly contributed to a work, each as to a distinct part, the one who publishes the work has the exclusive right of republication during his life, and his assigns during fifty years afterwards, on condition that he places his name on the title-page, or some other usual place.

If a work of this kind has been published by several persons or by a firm, or if the person who publishes it has not been regularly named, the exclusive right of publication lasts for fifty years from the first publication.

The right of publication belonging to the Imperial University of Alexander, the Society of Sciences, and any other association, has the same duration.

Art. 5. The right given by Art. 4 to the publisher of the whole of a collaborative work is not to stand in the way of the exclusive right belonging to each author, in the absence of agreement to the contrary, of publishing separately or under another form, his portion of the work after the lapse of two years from the first publication of the work jointly as aforesaid.

Art. 6. When a work has been published simultaneously

in several languages, named on the title-page, it is considered as composed in each of the languages.

Translation.

A native author's right of publication includes also the exclusive right of publishing a translation of it in a national language during the whole period of protection, and in any other language for five years from first publication. In Finland, Finnish and Swedish shall be considered national languages.

If on the title-page of the writing of a foreign author the right of translation be reserved, this right lasts for five years from the first publication.

Art. 7. A translator has the same right in his translation as the author of an original work.

Piracy, definition of.

Art. 8. Any person who without authority reproduces or causes to be reproduced a writing by printing or otherwise, for circulation, incurs the consequences of piracy fixed in chap. 4.

The unauthorized reproduction of a writing with alterations, modifications, or additions, not sufficiently essential to make it a new work, is also piracy.

Not piracy.

Art. 9. The following are not considered piracy:

(*a*) Literal quotation of detached parts of writings or musical compositions already published.

(*b*) The insertion by way of specimen, in works of larger size and conceived on an original plan, of selections of prose, verse, or music already published, to a limited extent, or of short extracts from larger works, or of isolated drawings or pictures.

The insertion of small works, extracts, morceaux of music, drawings, or pictures of that kind, already published by other authors, in school books, manuals, collections of songs or hymns, and other collections or arrangements intended for instruction, education, pious exercises, or any other special literary object.

The reproduction of a fragment of poetry already published jointly with or as words to a fragment of music, unless the verses were exclusively intended to serve as words for an opera or oratorio.

(*c*) The reproduction in a newspaper or a review of isolated articles or communications, extracted from another periodical, except, however, novels and scientific and literary articles the reproduction of which has been reserved.

In all the foregoing cases the original work from which the extract, &c., is taken must be clearly indicated.

Art. 10. Any person may, subject to the special regulations

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made on that subject, reproduce laws and general orders, reports and notices officially published, the decisions of the courts and other authorities, and all other official documents of every kind.

Art. 11. Sermons, lectures, and other analogous addresses delivered for purposes of instruction, education, or amusement, form the subject of copyright on the same grounds as other works of literature; but speeches and debates at the sittings of the Land Tag, at synods and parish or communal assemblies, at electoral or other public meetings, are subject to Art. 10,

CHAP. II.—*Representation of Dramatic Works and Musical Works destined for the Stage.*

Dramatic works.

Art. 12. No dramatic work not yet published in print, may be represented on the stage without the consent of the author or other person entitled to copyright. When the work has been printed and published with the name of the author properly given, and the exclusive right of public representation reserved, this right belongs to the author during his life and to his representatives for fifty years after his death. The simple reading in public without scenic accessories is not a public representation.

Any one who has lawfully translated or arranged a dramatic work for the stage, has for himself and his representatives the same copyright of the public representation of his translation or arrangement. There is a like right over the public representation of music composed for the purpose of being performed as an accompaniment of a scenic representation.

Posthumous dramatic works.

Art. 13. When the first representation on the stage of an unpublished work referred to in Art. 12 takes place after the death of an author and under his name, or during his life but without the author's name being then or afterwards given, as mentioned in Art. 3, the copyright fixed in Art. 12 shall last for fifty years from the first representation of an unprinted work, or from publication in print. Any person may publicly represent a work put in print without the proper reservation of the right of representation.

Art. 14. Copyright sanctioned by Arts. 12 and 13 may be transferred to several persons at the same time. If the exclusive right of representation be assigned and the assignee does not exercise it during five consecutive years, the right returns to the person to whom copyright belongs under the foregoing provisions.

CHAP. III.—*Reproduction of Works of Art.*

Art. 15. An artist has the exclusive right of reproducing his drawings, paintings, or plastic works by the same artistic process for the purposes of sale and assignment of the right. Artistic works.

An artist has also the exclusive right of causing his work to be reproduced by copper or steel engraving or etching, by lithography or any other analogous means, or further by oleography, casting, photography, or any other process of the same kind and of multiplying reproductions.

The right recognised to the artist as aforesaid belongs to him during his life, to his widow, and his heirs for fifty years afterwards. Duration.

The same right also belongs to any person who reproduces by copper engraving, lithography, wood engraving, or any other analogous artistic process, a work of art in which no exclusive right is subsisting, without prejudice to the right of any other person to make a reproduction of the same original by the same or an analogous process.

Art. 16. The reproduction of a work of art is not rendered lawful by the fact that it is executed on a larger scale, or in a different material, or with non-essential modifications, suppressions, or additions.

Reproduction of drawings or paintings in a plastic art and *vice versâ* is permissible.

Art. 17. Any person who takes, not to order, a photograph from nature or from a work of art, the reproduction of which is permitted, has for five years the exclusive right of reproducing this photograph for purposes of sale by means of photography, on condition that each copy bears his name and the date of the year when the first photograph was taken. Photographs.

When a photograph is taken to order, it cannot be reproduced, except with the consent of the person giving the order.

Art. 18. The following are not considered piracies: Not piracy.

(1) The reproduction of a work of art belonging to the State or exposed in a public place.

(2) The representation of a work of art in scientific or educational works.

(3) The use of a work of art as a model by manufacturers or workmen in the construction and ornamentation of furniture or other goods of practical use.

(4) The reproductions of works of art by pupils for the purposes of study.

CHAP. IV.—*Penalties of Artistic and Literary Piracy.*

Penalties.

Art. 19. Any person infringing another person's right of publishing a writing, representing publicly on the stage a dramatic work, performing music intended for the stage, or reproducing or multiplying in any manner the products of art, or photographs, by usurping and illegally exercising the rights protected by Arts. 1, 2, 4–7, 12, 15–17, is liable to a fine up to 2000 markkaa (*a*) and in damages: all illegal reproductions will be seized and confiscated, and destroyed or handed over to the proprietor of the copyright in reduction of damages. (Art. 22.)

Art. 24. When several persons have joined in committing the offences provided against by this law, each is to be treated according to the general rules relating to participation in offences.

Art. 25. Only the injured party can prosecute for these offences.

Art. 26. Fines decreed under this law are to be assessed according to Art. 1 of chap. 28 of the Code of Procedure, and converted, in case of inability to pay, into imprisonment with bread and water for a period corresponding to one-third of the fine.

Prescription of actions.

Art. 27. Criminal proceedings for these offences cannot be prosecuted after the lapse of two years from the offence. The action for damages is subject to the ordinary period of prescription in the case of actions for damages arising from torts. An injured person who desires to take as compensation or to buy the confiscated articles, must make his demand to the Criminal Court, or at the latest within three months after the decision in the criminal proceedings has become absolute. In this last case, if there has been already a decision on damages, the demand is to be made to the governor; in other cases to the court.

CHAP. V.—*General Provisions.*

Assignment.

Art. 28. In case of assignment of the right of publishing or preparing in any material a work mentioned in this law founded on copyright, there must be drawn up a written document fixing the exact limits of the grant, periods, and conditions of enjoyment: agreements thus made are to be the law between the parties. The simple assignment of the right of

(*a*) The markka = one franc.

publishing a literary work only carries the right of publishing without alterations a single edition of 1000 copies.

In every case where an assignment is only of a single edition, or a fixed number of editions, the author can resume the exercise of his right immediately on the publication of the last edition and without waiting till it is exhausted, on condition that he buys at trade price all copies which the publisher proves he has in stock within a period of three months after notice.

The same rule applies where the right of publication has been sold in its entirety when ten consecutive years have elapsed without the publication of a new edition.

Calculation of time.

Art. 29. Periods fixed by the present law to run from the death, publication, or representation, are always reckoned from the 1st of January following.

When a work appears in several volumes or parts, the periods will be calculated for each part or volume separately.

Art. 30. The right of publication of a manuscript cannot be seized for debts so long as the work remains unpublished in the possession of the author, his widow, or his heirs. When a writing has been published by the author or his representative, or they have alienated the right of publication, creditors may take proceedings to reimburse themselves from the profits to be derived from the publication.

Art. 31. All proceedings founded on this law are within the jurisdiction of the courts of first instance as now constituted by the laws at present in force.

Art. 33. This law came into force on the 1st January, 1881, and from that date is applicable to works of literature and art previously published, on condition that in cases where the rules prescribed by this law to make the right valid cannot be observed within the appointed time, they must be satisfied in the six months following the date aforesaid by notices published three times in the general newspapers of Finland. When the right of publishing a literary work is assigned with any special agreement as to translation, the assignment is not considered to include such right.

Copies already in existence of publications or reproductions not subject hitherto to the provisions of this law, may after the date aforesaid be circulated and sold.

Rights of Foreigners.

Foreigners.

Article 32 of the above law is as follows:

"The provisions of this law apply to (1) the works of Finnish

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authors and artists wherever they are published; (2) the works of foreign authors and artists residing in Finland and publishing their works there. And may also be declared by the Emperor and Grand Duke applicable in whole or in part, on condition of reciprocity, to the works of artists and authors of a foreign country with which there may be treaties on the subject." This last provision, however, has no practical application. See also Art. 6 above on the right of translation.

GREECE.

Copyright in Greece is regulated by Arts. 432 and 433 of the Penal Code of 1833, and by the provisions prescribing a deposit contained in the laws of the 10th May, 1834, and the 24th November, 1867 (*a*). The sections of the Penal Code coming under the head of piracy and imitation of works of art and of the intellect are as follows:

Penalties for piracy.

Art. 432. Any person who reproduces by printing or in any other way, or puts in circulation books or other printed writings, musical compositions, engravings, geographical drawings or charts, without the consent of the author, of the producer of the work, the publisher or their assigns or heirs, without the addition of some novel shape or form, during a period of fifteen years from the date of publication (with a reservation for cases where a longer privilege has been granted); or any person who within such period retails piracies or imitations so made by others against the law, of works of art or of the intellect, is punishable with a fine of 200 to 2000 drachmas (*b*), except when the privilege in question declares a special penalty.

Duration.

In every case the circulation of the pirated articles is to be stopped by seizure on the demand of the person injured, who, on the day when the conviction has become final, has the right of disposing of the articles seized.

Deposit.

Under the law of the 10th May, 1834, a copy of every book, newspaper, and periodical work published in Greece, must be sent to the Public Library. The author or publisher who contravenes this provision is punishable with a fine double the price of a copy (*c*).

By the law of the 24th November, 1867, relating to the National Library, that library is to include the Public Library and the University Library, and is to be augmented by the

(*a*) 'Lois françaises et étrangères,' par M. Lyon-Caen.
(*b*) Drachma = a franc.
(*c*) The failure to deposit does not forfeit the copyright, and is not a condition precedent to action against infringers. Note by M. Lyon-Caen.

deposit of two copies of every book which are according to the law to be made.

By Art. 3, the printer must deposit the two copies referred to. They must be delivered in Athens to the Commissary-General of the National Library in exchange for a receipt within ten days of publication, under penalty of a fine of double the price of a copy. This fine is recoverable agreeably to the law relating to the recovery of taxes. Outside Athens the delivery must be made to the local authorities, who must transmit the copies without delay to the National Library, which must send a receipt to be delivered to the printer.

M. Lyon-Caen remarks on this law, that it does not protect manuscripts or the representation of dramatic works.

Extension of the very short period of protection can be granted by the King in particular cases.

Several attempts have been made in recent years to remedy the imperfect legislation in Greece on the subject of copyright. In the year 1900 a Bill was brought into the Chamber of Deputies by the Minister of Justice, but failed to become law.

Rights of Foreigners.

Foreigners.

Art. 433 of the Code Penal is as follows:

"The dispositions of the previous article (*i.e.*, 432 *ante*) apply further (1) in favour of a foreigner who has not obtained a privilege in Greece, but only when the country of such foreigner grants the same protection to Greek subjects; (2) to all other inventions, works, or products of science or art, in so far as they are protected by privileges granted in Greece, against all injurious imitation."

In theory, this article should afford protection to the authors of several European nations, but in practice, it is not so, and the oriental markets are flooded with cheap piracies, especially of musical works, issuing from Greece (*a*).

ROUMANIA.

In the last edition of this work it was stated that the law of Roumania on literary and artistic property was in a state of uncertainty. The Press law of the 13th April, 1862, contained effective provisions on copyright, but it was doubtful whether this law had not been repealed by the Constitution of 1866. This doubt has, however, now been removed by a decision of

(*a*) 'Le Droit d'Auteur,' 1902, p. 82.

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the High Court of Cassation of 23rd September, 1893, which decided that the law in question was still in vigour. The following is the law, which is almost identical with the French law of 19th July, 1793:

CHAP. I.—*On Literary Copyright.*

Duration.

Art. 1. Authors of every kind of writing, composers of music, or draughtsmen who have their pictures or drawings lithographed, shall enjoy during their life, as property, the exclusive right of reproducing and selling their works throughout the principality (*a*), or of transmitting this property to others, the right being recognized by the laws in force.

Art. 2. Their heirs or assigns shall enjoy this right for ten years after the death of the author or composer.

Newspapers.

Art. 3. Newspapers and other periodicals are the property of the persons or societies publishing them: their right of property is secured according to the terms of the foregoing articles.

Articles which the author or proprietor wish to protect from production by other papers must carry at the commencement a notice that reproduction is forbidden. This refers only to literary and scientific articles.

Dramatic compositions.

Art. 4. Dramatic compositions cannot in the periods mentioned be represented in any theatre, or published, without the consent of the author.

Translations.

Art. 5. Translations are not comprised in the foregoing enumeration, except the text of a translation from the original text. Also extracts made from writings introduced in lectures or commentaries with the aim of instructing the public on the value of these writings are not infringements of the rights of another.

Penalties.

Art. 6. All administrative authorities shall on the demand and for the benefit of the author, the draughtsman, the translator, or their heirs or assigns, confiscate all copies of publications printed, engraved, or lithographed without the express written consent of the proprietors.

Art. 7. In addition to confiscation, the pirate shall pay to the rightful owner a sum equivalent to the price of 1000 copies of the original edition.

Art. 8. Every vendor of a pirated publication, which he has not himself fabricated, shall pay the proprietor a sum equal to the price of 200 copies.

(*a*) Roumania is now a kingdom.

Formalities.

Art. 9 provided that any one publishing a printed, engraved, or lithographed work must deposit four copies at the Ministry of Public Education, and in the provinces two copies at the prefecture, and one at the library of Jassy, but by a recent law of 19th March, 1904, Art. 9 has been repealed, and no deposit is now necessary in order to obtain copyright.

Art. 10. After the expiration of ten years from the death of the author, every work becomes public property, and any one may reproduce it by printing, sculpture, or lithography.

The following regulations for carrying the above law into effect are dated 24th April, 1862:

Registration.

Art. 1. In order that the copyright secured to authors of writings and literary and artistic publications may be ascertained, a special register shall be kept at the Ministry of Public Education, in which the requests and declarations of authors shall be entered.

Entry shall be made of the name of the author or composer, the title of the work, the date of publication and of the deposit made under Art. 9 of the law (*a*).

Art. 2. Authors and composers must on making the deposit address a written request to the Ministry of Public Education that their copyright may be registered; on their request, the Minister shall deliver an extract from the register certified by his signature and the seal of his department.

Art. 3. The formalities prescribed by the preceding articles shall be also observed in case of assignment.

Art. 4. Proprietors by succession or any other title enjoy the same rights as authors for all posthumous works, when these are printed apart and not collected with a new edition of works previously published and become public property.

The Penal Code of 1864 provides:

Penal Code of 1864.

Art. 339. Every publication of writings, musical compositions, drawings, paintings, or any other production, printed or engraved in any manner without the leave of the author, is considered a piracy, and every piracy is a misdemeanour.

Art. 340. The sale of pirated works, and the importation into Roumania of writings which after being printed in Roumania have been pirated in a foreign country, are an offence of the same kind.

Art. 341. The penalty against a pirate or importer is a fine of 100 to 2000 francs, and against the vendor a fine of 26 to 500 francs.

(*a*) Now repealed. See above.

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Confiscation of the pirated publication will be decreed against the pirate, importer, and vendor. Plates, moulds, and matrices of pirated publications shall also be confiscated.

Art. 342. Every director or manager of a theatre, and every society of artists who shall represent a work in a theatre without the author's leave, shall be punishable with a fine of 50 to 500 francs and confiscation of the receipts of the representation.

In the cases provided for by the above four articles, the produce of the confiscations shall be handed over to the proprietor (of copyright) by way of compensation.

Rights of Foreigners.

Foreigners.

By Art. 11 of the Press Law of 1862 it is enacted:

"All these rights are secured to authors, composers, draughtsmen, and translators of foreign countries which reciprocally secure literary property within their territory."

It was a matter of doubt whether foreigners were under the necessity of making the deposit required by Art. 9 before its repeal. There were conflicting decisions of the Roumanian courts upon the point, but the doubt has now been set at rest by the recent repeal of the article in question (*a*), which repeal seems to have the effect of removing the only difficulty that stood in the way of foreigners who are citizens of countries according reciprocal protection obtaining protection for their works in Roumania.

SERVIA.

Servia.

Servia has no law on copyright, though as long ago as 1844 it was provided in the Servian Civil Code of that year that a regulation should be made concerning the publication of books and the relations between authors and publishers.

Servia in 1883 agreed to enter into a treaty with France on the subject of copyright, but has not yet done so (*b*).

BULGARIA.

Bulgaria.

Bulgaria has no law on copyright, nor has she entered into any copyright treaties.

(*a*) See *ante*, p. 673.
(*b*) 'Lois françaises et étrangères,' par M. Lyon-Caen.

MONTENEGRO.

This country has no special law on copyright, but literary and artistic property is protected under the common law and the Civil Code of 1888. In the year 1893 Montenegro became a party to the Berne Convention, but she retired in the year 1900, "from motives of economy." She, however, has a copyright treaty with Italy, dated the 27th November, 1900, and another with France, dated 24th January, 1902 (*a*).

CHINA.

China has no special law on copyright. An interesting note contributed by General Tcheng-Ki-Tong to 'Lois françaises et étrangères,' by M. Lyon-Caen, states that publications may be divided into two classes, classical and modern.

Classical works have long become public property or rather the property of the State, which is a very liberal owner: with the exception of books of great importance and éditions de luxe, which can only be printed with the permission of the government, all current treatises may be freely reprinted by any one. A person publishing without leave when necessary would speedily be punished under the ordinary law.

There are only a scanty number of publishers of contemporaneous literature. Usually authors print, edit, and sell their own works as best they can. Most books carry the caution "Reproduction forbidden." In case of piracy the magistrate would punish the offender with eighty blows (*b*): the pirated copies and the type would be destroyed by burning.

Only works treating of literature and poetry are protected: authors of political works and novels are not encouraged and are often themselves punished.

An author rarely exercises his right: reprints are habitually sold cheaper than the original and have a larger sale, and the author contents himself with the extra fame thus acquired.

The courts look with little favour on the complaints of publishers, reproaching them with selling at too high a price.

In theory literary property is perpetual, passing to the author's heirs: in practice literary property is but ill defended. Duration.

(*a*) The text of these treaties, translated into French, may be found in the collection of treaties published by the Official Copyright Bureau at Berne in 1904.

(*b*) According to M. Alcide Darras, 'Les Droits Intellectuels,' 100 blows and three years' transportation.

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In the year 1898 the Emperor issued a decree ordaining that "if any of our subjects writes a useful book on new subjects, or makes a new mechanical invention, or produces an artistic or scientific work profitable to the country in general, he ought to be honoured and recompensed by us in order to act as an encouragement and inducement to others who possess a like talent or genius." The decree further ordered the Tsung-li-Yamen to frame rules for the protection of literary property and to make a report. The decree, however, has remained a dead letter.

Rights of Foreigners.

Foreigners.

There is practically no protection to foreigners against piracy of their works in the interior of China. In the open ports the mixed tribunals can be invoked, but it is doubtful how far they would protect authors. If, however, the offenders are foreigners established in China they can be sued before the consular jurisdiction of their country. A British Order in Council made under the Foreign Jurisdiction Act, 1890, dated 2nd February, 1899, provides that any act which if done in the United Kingdom or in a British possession would be an infringement of copyright, shall, if done by a British subject in China or Corea (*a*), be an offence against that order, whether such act be done in relation to any property or right of a British subject, or of a foreigner, or otherwise, such offence to be punishable with imprisonment not exceeding three months, or a fine not exceeding £100, or both. A prosecution by or on behalf of a prosecutor who is not a British subject is not to be entertained without the consent in writing of the British Minister or Chargé d'Affaires. The United States has recently concluded a treaty with China by which American books are to receive some protection in China (see United States, *post*), but it remains to be seen whether the treaty will be of any value.

JAPAN.

Copyright in Japan is regulated by a new law of 3rd March, 1899, replacing an earlier law of 28th December, 1877. The principal provisions of the new law are as follows (*b*):

Law of 3rd March, 1899.

Art. 1. The exclusive right of reproducing writings, speeches,

(*a*) The Order in Council originally extended to Japan, but Great Britain's consular jurisdiction in that country has ceased, since 1899.

(*b*) Taken from the French translation in 'Le Droit d'Auteur,' 1899,

paintings and designs, sculptures, plastic works, photographs, and other works in the literary, scientific, or artistic domain belongs to the author.

Copyright in a literary or scientific work includes the right of translation, and in a dramatic or musical work the right of publication, representation, and performance.

Art. 2. Copyright is transferable.

Art. 3. Copyright in a published work lasts for the life of the author and thirty years after his death. In the case of collaborations it lasts for thirty years from the death of the survivor. Duration.

Art. 4. Copyright in posthumous works lasts for thirty years from the first publication, representation, or performance. The period is the same in the case of anonymous or pseudonymous works, except that they are entitled to full protection if the authors register their true names.

Art. 6. Works belonging to public bodies, educational or religious establishments, companies or corporations, are protected for thirty years from first publication, representation, or performance.

Art. 7. The right of translation lapses if the author or his assigns do not publish a translation within ten years. If during this period an author publishes a translation in a language for which protection is claimed, his right of translation does not lapse so far as concerns that language. Translations.

Art. 8. The term of copyright in the case of works published in a series of volumes, is reckoned from the date of each volume; but in the case of works published in parts the term is reckoned from the last part, unless three years or more elapse between the parts. Calculation of period of protection.

Art. 9. In calculating the periods above referred to no account is to be taken of the residue of the year in which the author dies, or of the year in which the work is published, represented, or performed.

Art. 10. Copyright is lost in default of heirs.

Art. 11. The following are not the subject of copyright: (1) laws, ordinances, and official publications; (2) information, news of the day, and political articles in newspapers or periodicals; (3) speeches and arguments before the courts or in deliberative assemblies and political meetings. Not subject of copyright.

Art. 12. The publisher or performer of an anonymous or pseudonymous work safeguards the rights of the author and his assigns, unless the author's true name be registered.

Art. 13. Copyright in collaborations belongs to all the Rights of collaborators.

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authors. In case the parts of the work are not distinct, the right of any one opposed to the publication, representation, or performance can, on payment of its value, be acquired by the others, in the absence of contrary agreement, but the name of the opposing author may not then be put 'on the work against his will. If the several parts of the work be distinct, the several authors may each publish, represent, or perform their distinct parts in case any of the others are opposed to the publication, representation, or performance of the common work, and in the absence of contrary agreement,

Compilations. *Art.* 14. Any one making a lawful compilation from the works of various authors is to be considered the author of the compilation and to have copyright in the whole work, without prejudice to the copyright of the various authors in their respective portions.

Registration. *Art.* 15. The author or his assignee may register his copyright. In default he cannot bring a civil action for infringement or transfer or mortgage his rights to third persons. The author of an anonymous or pseudonymous work may register his true name. Rules as to registration are to be made by ordinance (*a*). (Art. 16.)

Art. 17. Unpublished works are not subject to execution by creditors without the consent of the author or his assignee.

Art. 18. An assignee may not, without the author's consent, alter the name or appellation adopted by the latter or modify the title of the work or correct the work itself.

Notes, corrections, &c. *Art.* 19. Neither the addition of the marks called "Kun-ten" (*b*), interlineary translations, punctuations, critical notes, appendices, plans, designs, and other corrections, additions, suppressions, and alterations of the original work, nor the adaptation of the work, create copyright specially in these modifications, unless works of this character can be considered new works.

Newspaper articles. *Art.* 20. Articles in newspapers and periodicals, with the exception of stories and novels, can be reproduced, with acknowledgment of source, unless the right of reproduction is expressly reserved.

Translations, reproductions, &c. *Art.* 21. Any one lawfully translating a work enjoys copyright in his translation, but if the original has fallen into the public domain, the translator cannot prevent other translations.

Art. 22. Whoever lawfully reproduces an artistic work by a

(*a*) See *post*.

(*b*) "Kun-ten" are marks facilitating the reading of Chinese texts. Likewise the interlineary translations and punctuations only apply to Chinese characters.

different art to that employed in the original has copyright in his reproduction.

Photographs.

Art. 23. Copyright in a photograph lasts for ten years, calculated from the date of publication, or from the taking of the negative if it be not published.

Any one lawfully reproducing a work of art by photography enjoys copyright as long as the copyright subsists in the original work, without prejudice to any agreement between the parties concerned.

Art. 24. If photographs be made specially for the purpose of being inserted in a literary or scientific work, the copyright belongs to the author of the work and subsists as long as the work itself is protected.

Art. 25. The right to reproduce photographic portraits belongs to the person who has ordered them.

Art. 26. The provisions as to photographs are applicable to works obtained by an analogous process.

Art. 27. Regulations may be made with regard to the publication, representation, and performance of unpublished works the proprietors of which are unknown (*a*).

Piracy and the remedies therefor.

Art. 29. Any one infringing copyright must make reparation in accordance with the provisions of this law and those of the Civil Code, Book II., chap. 5.

Art. 30. The following are not piracies of published works: (1) reproduction otherwise than by a mechanical or chemical process and without any intention of publishing the reproduction; (2) making extracts and citing passages, provided the quotations are kept within legitimate limits; (3) selecting and collecting small portions within legitimate limits, intended for the use of schools, for a reading book or a course of ethics; (4) introducing phrases extracted from a literary or scientific work into a dramatic work, or to serve as the libretto of a musical work; (5) inserting in a literary or scientific work artistic productions to explain the text, and *vice versâ*; (6) reproducing by plastic art a painting or work of draughtsmanship, and *vice versâ*.

In the above cases the source must be clearly indicated.

Art. 31. Any one importing piracies with the object of selling and circulating the copies within the Empire is to be treated as a pirate.

Art. 32. Any one publishing a collection of solutions of

(*a*) By ordinance of 28th June, 1899, any person desiring to take advantage of this provision must advertise his intention in the 'Official Gazette' and in at least four principal Tokio newspapers and in a newspaper of the author's domicile, if known. Publication can then be made if the author be not discovered within six months.

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problems intended for classical exercises is to be treated as a pirate.

Art. 33. Any one who, in good faith and without fault on his part, commits a piracy and makes profits to the detriment of third persons, must make restitution of these profits.

Art. 34. One of several co-proprietors of copyright may sue for infringement without the consent of the others, and recover his proportion of damages or profits.

Presumptions of authorship.

Art. 35. In a civil action there is a *primâ facie* presumption that the person whose name appears on the work as such is its author, and in the case of an anonymous or pseudonymous work, that the publisher named on the title-page of the work is the true publisher. In the case of an unpublished dramatic or musical work, the person who is named as its author in the announcement of the performance, or, if no one is so named, the organizer of the performance is, *primâ facie*, the author of the piece.

Precautionary measures.

Art. 36. When a civil or criminal action has been commenced for piracy, the court may, at the request of the plaintiff, with or without taking security, forbid the sale and circulation, or seize or suspend the execution or performance of a work suspected of being a piracy. If at the trial the work is pronounced to be no piracy, the plaintiff will be civilly liable in damages.

Penalties.

Arts. 37 to 43 provide penalties of varying amount for the several offences under the statute. Piracies and all plant used exclusively in the production of infringements are to be confiscated, but only if they belong to the infringer, the printer, or the person who sells or circulates the piracies.

Limitation of actions.

Civil or criminal proceedings must be commenced within two years (*a*). (Art. 45.)

Transitory provisions.

Art. 47. Works which have not fallen into the public domain at the date of the passing of this law, are to enjoy the privileges accorded by it.

Art. 48. Reproductions which have been made or commenced before the passing of this law, and which, but for this law, would not have been piracies, may be finished, sold, or distributed, and existing plant used for these reproductions may be utilized for five years from the date when this law comes into operation.

Art. 49. Translations begun or finished before the passing of this law, and which, but for this law, would not have been

(*a*) The law does not state when this period is to begin to run.

piracies, may be finished, sold, or distributed, provided they are published within seven years. Such translations may be reproduced for five years from their first publication.

Art. 50 contains similar provisions as to dramatic and musical performances for a period of five years.

Art. 51. The formalities to be prescribed (*a*) must be complied with in the case of reproductions falling within the provisions of Arts. 48 to 50.

Art. 52. This law does not apply to works of architecture. Architecture.

An ordinance of 28th June, 1899, prescribes the formalities necessary for registration under Art. 15. A request for registration must be addressed to the Minister of the Interior, and be in the form contained in the Schedule. It must set forth (1) the title of the work; (2) the name and surname of the author (if the work be not anonymous); (3) the date of publication, representation, or performance; (4) the contents of the work; (5) the date of previous registration as an anonymous or pseudonymous work where it is desired to register under the author's true name. Registration.

The registers are to be kept by the Minister of the Interior, and may be consulted and extracts obtained on payment of a fee.

Rights of Foreigners.

On the 16th July, 1894, Japan concluded with Great Britain a treaty of commerce, with a protocol annexed, by clause 3 of which it was provided that the British consular jurisdiction in Japan should cease as soon as Japan adhered to the international conventions relative to industrial property and copyright. This engagement was repeated in similar treaties with other countries. On the 18th April, 1899, Japan signified her adhesion to the Berne Convention, this adhesion to take effect from July 15 of the same year, and thereupon the consular jurisdiction ceased. Cessation of consular jurisdiction in Japan.

The Japanese law of the 3rd March, 1899, provides for international protection only in the case where there is a treaty or convention. Any foreign author, however, can obtain copyright by publishing first in Japan. Art. 28 of the above-mentioned law is as follows: Protection of foreigners.

"The provisions of this law shall apply to foreigners, so far as concerns the protection of their copyright, subject to the special stipulations, if any, contained in treaties and conventions:

(*a*) These formalities are prescribed by an ordinance of 27th June, 1899. Generally the copies and the plant must be stamped within a given time.

in the absence of such stipulations, the protection of this law shall be accorded to those persons who shall make the first publication of their works in the Empire."

SIAM.

Law of 12th Aug., 1901.

On the 12th August, 1901, the first law on the subject of copyright was promulgated in Siam. This law relates only to literary copyright. It commences with a preamble which recites that when an author, with the resources of his imagination, intelligence, and knowledge has devoted his efforts to composing a work, and has caused it to be printed and published with a view to making a profit, it happens, particularly when the work has a considerable sale, that other persons do not fear to print and expose it for sale, and by these means cause the author to lose the profit to which he was justly entitled: that this practice is prohibited in the majority of foreign countries where all persons other than the author, or any person authorized by him, is forbidden to make extracts from his work or to copy it or publish it: consequently, Her Majesty has deemed it necessary to make a law which shall have force and vigour throughout her dominions, to protect the interests of authors in a manner conformable to justice. The main provisions of this law, which came into force on the 12th August, 1901, are as follows:

Art. 3. Any one publishing a work in the form of a book or pamphlet, and complying with the conditions of this law, possesses, with respect to his work, identical rights with those he has in any other property belonging to him.

Art. 4. Copyright includes the exclusive right of abridging, translating, circulating, or selling the work.

Duration.

Art. 5. The term of copyright is the life of the author and seven years from his decease, with a minimum of forty-two years.

Art. 6. The author's heirs can acquire copyright in his posthumous works for a period of forty-two years from the author's death.

Art. 8. The copyright in works intended for instruction and composed at Government expense vests in the Government.

Transitory provisions.

Art. 9. As to books printed and sold before this law came into force: (1) if the author was then dead, no copyright is conferred; (2) if the author were living and were also the printer and publisher of the work, he must acquire copyright with twelve months of the promulgation of this law; (3) if the

author were living, but had parted with his right to print and sell his work, he acquires no copyright; (4) if the author were still living, and had entered into a contract with a publisher under which he was entitled to a share of the profits arising from his work, he must give notice to the publisher of his intention to acquire copyright, and, if the latter consent, copyright can be obtained; if he oppose, the matter is left to the tribunals to decide.

Formalities.

Art. 10. In order that a book may acquire copyright it must be printed and submitted to the proper official for registration within twelve months from publication. If the author die before having acquired his right, the heirs must seek the right within twelve months from his death. A copy of the work must also be presented to the official having charge of the register (Art. 12), and three copies must be deposited for certain libraries. (Art. 15.) Transferees may be registered. (Art. 15.) There is a fee payable on registration. (Art. 17.)

Infringement and remedies.

Art. 16. It is forbidden to make extracts from copyright works, or to translate, copy, or sell them, whether for profit or not. It is likewise forbidden to sell piracies without the authorization of the proprietor of the copyright.

The proprietor of the copyright can recover damages for infringement, and all copies printed in violation of his rights belong to him.

Rights of Foreigners.

Foreigners.

The above law does not contain any provisions of an international character. According to Art. 7 it applies only to works printed and published for the first time in Siam, but apparently a foreigner so printing and publishing would be entitled to receive protection.

EGYPT.

Native courts.

The situation in Egypt with regard to copyright is somewhat peculiar. Article 323 of the Egyptian Penal Code, first promulgated in 1884 and extended in 1889 to the whole of Egypt, forbids piracy of books. This applies to the native courts.

Jurisdiction of the Mixed Courts.

Protection is also afforded to literary and artistic property by the Mixed Courts, which have jurisdiction in the case of civil disputes between natives and foreigners and between foreigners of different nationalities; the criminal jurisdiction of these courts is very limited. These Mixed Courts, three in number, with a Court of Appeal, were established under the Convention of 1875.

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Regulations have been established for these courts, and under Art. 34, the new courts in the exercise of their jurisdiction in civil and commercial matters, and within the limits given to them in criminal matters, are to apply the codes presented to the powers by Egypt, and in case of the silence, insufficiency, or obscurity of the law, the judge shall observe principles of natural justice and the rules of equity.

The codes are silent as to copyright, but the courts have decided that under the principles of natural justice and the laws of equity, copyright ought to be recognised.

At the date of the last edition of this work five decisions had been given by these courts and a considerable number have since then been added, the plaintiffs in the decided cases having been generally either Frenchmen or Italians. These decisions relate to the reproduction of novels in Egyptian newspapers, the unauthorized performance and execution of European musical, musical dramatic, and dramatic works and infringement of photographs.

The principle laid down by the Court of Appeal in what may be termed the leading case of the *Société des Gens de Lettres* v. *The Egyptian Gazette* (*a*) is that "copyright is a veritable right of property, founded on labour," and that the absence of any special law on the subject in Egypt ought not to have the effect of destroying this right, but that it ought to receive protection by virtue of Art. 34 of the Regulations above referred to. All property ought to be respected, including literary and artistic property, and therefore an author ought to be entitled to bring an action for damages for infringement of his rights. In conformity with the principle here laid down, it has been held that no formalities are needed to obtain copyright in Egypt, and that authors of musical and dramatic pieces cannot be compelled to allow their performance on payment of a reasonable sum. The Mixed Tribunal at Cairo has also held that the copyright in a picture remains in the artist after sale of his work, unless there has been an agreement to the contrary (*b*).

Consular jurisdiction.

By the side of the civil jurisdiction thus exercised by the Mixed Courts is the criminal jurisdiction of the consular courts of the various Christian countries. These courts primarily deal with litigation between subjects of one and the same nation, but a subject of one country is also at liberty to proceed against the subject of another country in the consular

(*a*) Reported in 'Le Droit d'Auteur,' 1889, p. 101.
(*b*) *Schilli* v. *Lekizian*, 16th May, 1896.

court of the country of the latter, the law to be applied being the law of the defendant's country. An important judgment was delivered on the 12th March, 1896, by the consular court of France, at Cairo, and affirmed by the Court of Aix, on the 11th February, 1897, which declared that "by virtue of the principle of exterritoriality recognised by international conventions, Frenchmen in Egypt are subject to the French penal law for all crimes and offences covered by that law. . . . This privilege of exterritorality has the effect of subjecting Frenchmen to the local jurisdiction in Egypt in penal matters, and, as a necessary corollary, imposes the duty upon the French consular tribunals of trying matters deemed to be offences by French law"; and the defendant was fined under Arts. 425, 428, and 429 of the French Penal Code for infringement of the plaintiff's dramatic copyright (*a*).

M. Darras, in an able article contributed to 'Le Droit d'Auteur' (*b*), contends that not only Frenchmen domiciled in Egypt are called upon to respect the rights of authors and artists exactly as though the parties were actually in France, but that Englishmen, Germans, Belgians, Dutch., &c., are under equal obligation to respect in Egypt not only the rights of their fellow countrymen, but also the rights of all others whose rights they would be obliged to respect in their own country; so that, for example, Englishmen in Egypt may be sued in the consular courts for infringing the copyright of authors belonging to any country of the Copyright Union. However this may be with regard to the other European countries, it is not clear that the British consular courts have jurisdiction in the matter of copyright. The English consular jurisdiction rests entirely upon Orders in Council made under the Foreign Jurisdiction Act, 1890, which codified the earlier laws on the same subject (*c*), and when the Mixed Courts were established in Egypt the jurisdiction of the consular courts was, by Order in Council of 5th Februry, 1876, suspended as to such matters "as come within the jurisdiction of the Mixed Courts." It might be contended, therefore, that as the Mixed Courts have undoubtedly some jurisdiction in the matter of copyright, the British consular jurisdiction is ousted.

(*a*) *Société des auteurs et compositeurs dramatiques* v. *Jules Morrand*. 'Le Droit d'Auteur,' 1897, p. 129. (*b*) 1895. p. 165.

(*c*) See Piggott on Exterritoriality. Foreign jurisdictions exercised in consular courts exist at the present time: (1) in civilized independent States, by virtue of express treaty, as in Turkey, Persia, and China; (2) in protected States, with a settled form of government, as in the protected African communities, where the relation of suzerain and dependent State involves such a jurisdiction: (3) in countries with no settled form of government, as in the African spheres of influence, or in the Pacific islands. See Anson on the Crown, p. 282.

TUNIS.

French Protectorate.

By a treaty of 12th May, 1881, a French protectorate was established over Tunis.

The following law on artistic and literary property was passed on the 15th June, 1889, and published in the official Tunisian journal on the 20th June, 1889 (*a*).

Duration.

Art. 1. Authors of literary and artistic works enjoy during their entire life the exclusive right of sale, of reproduction, of representation or performance and circulation of their works throughout the territory of the regency of Tunis, and also the right of assigning such property in whole or in part. Nevertheless this protection is limited to (1) works published for the first time in Tunis, whatever may be the nationality of the author; (2) to works published in a foreign country, for the protection of which a diplomatic treaty can be cited.

Art. 2. The right is prolonged for fifty years after the death of the author, for the benefit of his heirs or assigns.

Definition clause.

Art. 3. The expression "literary and artistic works" includes books, pamphlets, and all other writings, dramatic or dramatic-musical works, musical compositions with or without words, works of drawing, painting, sculpture and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, and sciences in general: in short, every production of the literary or scientific and artistic domain which can be published by any method of printing or reproduction (*b*).

Copyright does not exclude the right of making quotations for purposes of criticism, argument, or education.

Newspapers.

Every paper may reproduce an article published in another paper, on condition of indicating the source, unless this article carries a special warning that reproduction is forbidden.

Translations.

Art. 4. Copyright in a literary work includes the exclusive right of making or authorizing a translation of it. Copyright in musical compositions includes the exclusive right of making arrangements on the motifs of the original work.

Penalty for infringement.

Art. 5. No literary or artistic work not become public property may be publicly performed in the regency, without the formal consent in writing of the author or his assigns, under penalty of a fine of 50 piastres (*c*) at least, and confiscation of receipts for the benefit of the authors or their assigns.

(*a*) Translation taken from 'Le Droit d'Auteur,' 1889.
(*b*) This definition agrees with that in the Berne Convention.
(*c*) Piastre = 5$\frac{3}{4}$*d*. Whitaker.

Art. 6. Piracy in the territory of the regency constitutes a misdemeanor; and so also the sale, exportation, and consignment of pirated works, as well as their importation into Tunisian territory.

Piracy.

Art. 7. Any persons who knowingly sell, expose for sale, keep in their shops for purposes of sale, or import into the territory of the regency, with a commercial object, pirated articles, are guilty of the same offence.

Art. 8. The offences mentioned in Arts. 6 and 7 are punishable with a fine of 50 to 2000 piastres.

Confiscation for the benefit of authors or their assigns of pirated works or articles, as well as plates, moulds, or matrices, and other implements directly employed in committing these offences, will be decreed against convicted persons.

The fabrication and sale of instruments mechanically reproducing airs of music which are private property do not constitute musical piracy (*a*).

Art. 9. The fraudulent application to a work of art, a work of literature or music, of the name of an author, or any distinctive sign adopted by him to distinguish his work, will be punishable with imprisonment from three months to two years, and a fine of 100 to 2000 piastres, or of one of these two penalties only.

The confiscation of pirated articles is to be decreed in every case.

Persons who knowingly sell, expose for sale, keep in their shops, import into the territory of the regency, or export for purposes of sale the articles pointed out in the first paragraph of this article, are punishable with the same penalties.

Art. 10. The local authorities must in every case give their assistance to authors or their attorneys for the ascertainment and repression of all acts in opposition to their rights.

Art. 463 of the French Penal Code is applicable to the acts contemplated and restrained by this law (*b*).

Art. 11. The French Courts are alone competent to take cognizance of all claims or disputes relating to this law.

Rights of Foreigners.

Foreigners.

Rights of foreigners under the Law of 15th June, 1889, are limited by Art. 1 above set out: (1) to works published for the first time in Tunis, whatever may be the nationality of the

(*a*) Protocol of the Berne Convention, Art. III.
(*b*) *Ante*, p. 556, *note* (*b*).

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author; and (2) to works published abroad, and for the protection of which a diplomatic convention can be invoked.

By the treaty of 12th May, 1881, before referred to, Tunis undertook not to conclude any international act without the assent of France, but, with that assent, she has ratified the Berne Convention and the Additional Act of Paris.

M. Darras' opinion.

It is the opinion of M. Darras (*a*) that the law of 15th June, 1889, is applicable only to Tunisians who are not under the protection of some European Power. He contends that as regards France, the effect of the treaty of 12th May, 1881, is that the French tribunals are competent to punish offences against Frenchmen, and that inasmuch as a French law of 28th May, 1836, has enacted that "offences, delicts, and crimes committed in the Levant shall be visited with the penalties provided by the French laws," Frenchmen in the Levant are subjected to the penal provisions of the French laws; and that, though by a French law of 27th March, 1883, consular jurisdiction in Tunis has been suppressed, this has not had the effect of abrogating the provisions of the law of 28th May, 1836. According to M. Darras there is this special peculiarity about Tunis, that this latter law does not apply to Frenchmen only, but ought to be extended to all Europeans, because, since the establishment of the French protectorate over Tunis, all the European Powers have renounced the benefit of the Capitulations (*b*), and this, he contends, has had the effect not only of attributing competence to the French tribunals at Tunis over all Europeans, but of rendering applicable the provisions of the French penal laws. This opinion is, to some extent, confirmed by a judgment of the Tunis Court delivered the 29th December, 1900 (*c*), by which certain Italians were fined under Article 463 of the French Penal Code, though the decision of the court was based not upon the grounds suggested by M. Darras, but erroneously, no doubt (*d*), on the provisions of the Berne Convention.

SOUTH AMERICA.

In 1888 an international congress of the States of South America met at Montevideo under the auspices of the Argentine Republic and the Republic Oriental of Uruguay.

(*a*) 'Le Droit d'Auteur,' 1901, p. 91.

(*b*) See British Order in Council, 31st Dec., 1883. Piggott on Exterritoriality, pp. 209, 210.

(*c*) 'Le Droit d'Auteur,' 1901, p. 57.

(*d*) According to the provisions of the Berne Convention it is the law of the country where the piracy is committed that is applicable.

Montevideo Convention of 1889.

One of the most noteworthy results of this congress was the drawing up of a treaty for the protection of works of literature and art, which treaty was signed on the 11th January, 1889, by the delegates of the following seven South American States: the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. The treaty provides that a simultaneous ratification by all the signatories is not a necessary condition of its coming into force, so that it at once becomes binding upon any nations ratifying it. The treaty has been ratified by the Argentine Republic, Paraguay, Peru, Uruguay, and Bolivia, and France, Spain, Italy, and Belgium have signified their adhesion to it, though this has only been accepted by the Argentine Republic and Paraguay. In 1902 another conference of American States was held at Mexico, which resulted in a Convention, called the Pan-American Convention. Seventeen American States, including the United States, signed this Convention, but it has been so far ratified by four only, viz., Guatemala, Salvador, Costa Rica, and Paraguay.

Differences between Montevideo Convention and Berne Convention.

The Convention of Montevideo differs from the Berne Convention in its fundamental principle, for the law to be applied is the law of the author's country, and not, as in the case of the Berne Convention, the law of the country in which protection is sought. It also differs from the Berne Convention in the following particulars:

(1) It does not protect the exclusive right of performance and representation of musical and dramatic works.

(2) It comprehends photographs and choregraphical works under the terms literary and artistic works: the Berne Convention, sects. 1 and 2 of the Protocol, protects the photographs of a work of art as the work itself: other photographs are only protected in countries where they are recognized as works of art; choregraphic works are only protected in countries whose law expressly recognizes them.

(3) The exclusive right of translation lasts for the same time as copyright instead of for ten years only.

Provisions of Montevideo Convention.

The treaty provides as follows:

Art. 2. The authors of all literary or artistic works shall enjoy in the signatory States the rights accorded to them by the law of the State where the first publication or production took place.

Art. 3. The right of property in a literary or artistic work includes, for the author, the power of disposition, of publication and alienation, of translation or authorizing translation, and of reproduction under any form.

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Art. 4. No State shall be bound to recognize a longer duration of literary or artistic property than that given to authors who obtain it directly in that State.

But the duration may be limited to that accorded by the country of origin, if it be less.

Art. 7. Newspaper articles may be reproduced on condition that the publication from which they are taken be named, except articles treating of art or science, reproduction of which has been expressly forbidden.

Art. 8. Speeches delivered or read in deliberative assemblies, in courts of justice, or public meetings may be published in periodicals without authorization.

Art. 9. The following are considered unlawful reproductions: indirect and unauthorized appropriations of literary or artistic works, designated under various names, such as adaptations, arrangements, &c., when they are mere reproductions, without presenting the features of a new work.

Art. 10. Copyright shall be recognized unless proved to the contrary, in favour of the persons whose names or pseudonyms are indicated in the work.

If authors wish to conceal their identity, publishers must make it known that copyright belongs to them.

Art. 11. The liabilities incurred by persons infringing literary or artistic copyright shall be established and decided by the courts and regulated by the laws of the country where the offence has been committed.

Art. 13. It is not necessary for the coming into force of this treaty that it shall be ratified simultaneously by the signatory States. Any State which approves it, shall notify its approval to the governments of the Argentine and Uruguay Republics, in order that they may communicate it to the other contracting parties. This proceeding shall take the place of ratification.

Art. 14. When mutual approvals have been exchanged in the manner indicated in the preceding articles, this treaty shall remain in force indefinitely.

Art. 15. If any of the signatory States judges it useful to withdraw from the Convention or introduce modifications therein, it shall give notice to the other States; but it shall not be discharged until a lapse of two years after repudiation, during which period efforts shall be made to arrive at a fresh agreement.

Art. 16. Art. 13 may be extended to nations which may desire to adhere to the treaty, though they have not taken part in the congress.

The Pan-American Convention.

The Pan-American Convention is inspired by the Berne Convention and the Convention of Montevideo. It adopts the fundamental principle of the Berne Convention in conferring upon the author the protection which is accorded to natives in the country where protection is sought, but protection is only obtained on compliance with special formalities. The main provisions of this Convention are as follows:

Art. 2. Literary and artistic works comprise books, manuscripts, pamphlets of all kinds; dramatic or melodramatic works, choral music and musical compositions, with or without words; designs, drawings, paintings, sculpture, engravings, photographic works; astronomical and geographical globes; plans, sketches, and plastic works relating to geography or geology, topography or architecture, or any other science; and, finally, every production in the literary and artistic field, which may be published by any method of impression or reproduction.

Art. 3. Copyright consists in the exclusive right to dispose of a work, to publish, sell, or translate the same, or to authorize its translation, to reproduce the same in any manner, either entirely or partially. The term for which the exclusive right of translation lasts depends upon the law of the country in which protection is sought.

Art. 4. It is indispensable that the author or his representatives shall address a petition to the proper Official Department of his State, claiming recognition of his right, and accompanied by two copies of his work. If he desire that his copyright shall be recognized in other of the signatory countries, he must attach to his petition a number of copies of his work equal to that of the countries he may therein designate. The department is to distribute these copies among the countries, together with a certificate, in order that the copyright of the author may be recognized.

Art. 5. Authors who belong to one of the signatory countries or their assigns shall enjoy in the other countries the rights which their respective laws at present grant, or in the future may grant, to their own citizens, but such right shall not exceed the term of protection granted in the country of its origin.

Art. 6. The country of origin of a work in case it is published simultaneously in several of the signatory countries is to be the country according the shortest protection.

Art. 7. Translations are protected as original works.

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Art. 8. Newspaper articles may be reproduced with acknowledgment of source.

Art. 11. The reproduction in publications devoted to public instruction or chrestomathy, of fragments of literary or artistic works, confers no right of property, and may, therefore, be freely made in all the signatory countries.

Art. 12. All unauthorized indirect use of a literary or artistic work, which does not present the character of an original work, shall be considered as an unlawful reproduction.

Art. 15. The Convention shall take effect between the signatory States that ratify it, three months from the day that they communicate their ratification to the Mexican Government.

Art. 16. Signatory States, when approving the present Convention, shall declare whether they accept the adherence to the same by the nations who have had no representation at the Conference.

THE ARGENTINE REPUBLIC.

Argentine Republic.

There is no special law in the Argentine Republic on copyright. Art. 17 of the Constitution of 1869 provides that property is inviolable, and no inhabitant of the Argentine Republic can be deprived of it except by virtue of a legal decision in conformity with the law. Every author or inventor is the exclusive proprietor of his work, invention, or discovery, for the period accorded by law.

The promised law has, however, not yet appeared, and no period has been fixed by legislation for copyright.

Native authors are at present protected in their rights by the provisions of the Civil Code, of which the following are, according to M. Lyon-Caen (*a*), specially applicable to copyright.

Art. 1072. Every unlawful act committed knowingly and with the intention of injuring the person or rights of another, is considered as an offence by this Code.

Art. 1075. Every right may be the subject of an offence, whether it be a right over an external object or inseparable from the existence of the person.

Art. 1077. Every right gives rise to the obligation of making good the injury caused to another.

Art. 1083. The making good all injury, whether material or moral, caused by an offence may be reduced to a pecuniary compensation to be fixed by the judge, except in cases where

(*a*) 'Lois françaises et étrangères.'

there is an opportunity of delivering up the article which has been the subject of the offence.

Art. 1095. The right to claim the making good of damage caused by offences against property belongs to the proprietor of the thing, to the person entitled to possession of the thing or simply to hold it, as a tenant, bailee, or trustee; it belongs also to a mortgagee, who can put in force this right even against the proprietor of the mortgaged article if this latter has caused the damage.

Infringement of copyright becomes, under these provisions, a civil wrong, for which compensation may be obtained by an action for damages.

Rights of Foreigners.

Foreigners.

Although natives find protection for their works in Argentina, the rights of foreigners receive but scanty recognition, and the cases of piracy of European works, especially musical and dramatic works, have been on a large scale. In 1895 the Court of Buenos Ayres held that Art. 17 of the Constitution did not, in the absence of any treaty, confer copyright on a foreigner resident abroad, and that the works of such foreigners might be freely pirated. This decision has not met with the approval of the majority of text writers, and a more recent decision appears to be in favour of the view that the native assignee of the local rights in a foreign work can prevent piracies by others (*a*). Foreigners residing in Argentina are also probably protected.

The Argentine Republic was one of the prime movers of the Montevideo Convention, which she duly ratified. Latterly France, Italy, Spain, and Belgium have expressed their adherence to this Convention, and their adherence has been accepted by the Argentine Republic, but it has been disputed whether it was within the power of the executive to issue a decree accepting the accession of European powers. The point has been carried before the tribunals, but, it is believed, has not yet been determined.

The Republic has also signed the Pan-American Convention, but, at the time of writing, has not ratified it.

(*a*) See 'Le Droit d'Auteur,' 1903, p. 79.

BOLIVIA.

A law on literary and artistic works was enacted in Bolivia on the 13th August, 1879. It provides as follows (*a*).

Chap. I.—Of Literary Works in general.

Literary works.

Art. 1. It is lawful to publish by printing, by lithography, on the stage or in any other analogous way, any literary work without any previous censorship or restriction obstructing the free exercise of this right, subject to all liabilities incurred according to the laws.

This provision is applicable to the right of translation.

Laws.

Art. 2. It is lawful to publish laws and regulations and also all other official public decrees, on condition that the authentic text published by government is strictly adhered to.

Speeches.

Art. 3. Speeches delivered in the legislative chambers and all other speeches of an official character are included in this last provision. Nevertheless, a collection of all or part of the speeches of a particular speaker cannot be published except by the speaker himself or with his consent.

Lectures.

Art. 4. Lectures of masters and professors, also sermons, can only be reproduced by their author, except by way of abridgment.

Art. 5. Every manuscript work is the property of its author, and cannot in any case be published without his permission.

Art. 6. Private letters cannot be published without the consent of the author or his representatives, except in legal proceedings.

Duration.

Art. 7. The author of a printed or lithographed work enjoys the property in such work and the exclusive right of reproduction during his life.

Authors of writings of any kind have the right of quoting from one another, or copying fragments or passages relating to the subject of their works, on condition of indicating the author, the book, and periodical borrowed from.

Articles first published in a periodical, or forming part of some work or collection, can be reprinted by their authors, subject to agreement to the contrary.

Translation.

Art. 8. The author's rights contemplated by the previous

(*b*) This law follows closely the Portuguese Code of 1867, *ante*, p. 631. The translation is taken from the French translation in 'Lois françaises et étrangères,' par M. Lyon-Caen.

article include also the right of translation. But if the author be of foreign nationality, he only enjoys this right in Bolivia during ten years from the first publication of his work, and on condition that the translation has appeared before the end of the third year from publication.

In case of assignment, all the author's rights pass to the translator, subject to agreement to the contrary.

The translator, whether a Bolivian or a foreigner, of a work not become public property, enjoys, during thirty years, the exclusive right of reproducing his own translation, subject to the right of any other person to make a new translation from the same work.

Duration after death of author.

Art. 10. After the death of an author his heirs, assigns, or representatives, preserve the right of property mentioned in Art. 7 for fifty years.

Art. 11. The State or any other public institution which causes a work to be published enjoys the right aforesaid for fifty years from the publication of the last volume of the work.

If the work consists of a collection of writings or articles on different subjects, the fifty years count from the publication of each volume.

Art. 12. When a work has been produced by several authors, and each one of them has collaborated on the same conditions, and in his own name, the property in such work belongs to all the collaborators. The first period of duration of this property extends to the death of the last surviving collaborator, who enjoys the produce of such property jointly with the heirs of his deceased collaborators: the second period commences at his death.

If a collective work, composed of works by several authors has been undertaken, edited, and published by a single person, and in his name, the second period referred to commences to run from the death of such person.

Art. 13. The provisions of the preceding articles, so far as they relate to authors, apply to publishers to whom they have assigned their rights, following the terms of the respective agreements.

Nevertheless in this case, the duration contemplated by Art. 10 counts from the death of the author.

Anonymous works.

Art. 14. The provisions regulating works published with the author's name are also applicable to anonymous and pseudonymous works as soon as the author or his heirs or assigns reveal their identity and prove their existence.

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Art. 15. The publisher of the posthumous work of a known author enjoys copyright for fifty years from the publication.

Posthumous work.

Art. 16. The publisher of an unpublished work, of which the proprietor is unknown or cannot obtain legal recognition, enjoys copyright for thirty years from the completion of publication.

Expropriation by the State.

Art. 17. The expropriation of every published work, which is out of print, and which the author or his heirs are unwilling to reprint, although the work in question has not yet become public property, is lawful.

The State alone may proceed to this expropriation after procuring a law to this effect, and after previously compensating the author, and on condition of acting on the general principles of expropriation on the ground of public utility.

Arts. 18 and 19 relate to publishing agreements. A publisher may not alter a work, and must carry out his contract diligently (*a*).

Art. 20. Literary property is considered and regulated as all other personal property, subject to the special modifications by law prescribed, by reason of the special nature of this property.

Art. 21. In case of failure of heirs, the State does not succeed to copyright: any one may publish and reprint the works, subject to the right of creditors on the inheritance.

Art. 22. Literary property cannot be prescribed.

Art. 23. There is no property in works forbidden by the law and ordered to be withdrawn from circulation.

Chap. II.—Dramatic Works.

Dramatic works.

Art. 24. Dramatic authors enjoy property in their works in conformity with the provisions of the preceding chapter, and have in addition the following rights:

Art. 25. No dramatic work can be represented at a public theatre, where admission is obtained by payment, without the written consent of the author, his joint heirs, assigns, or representatives in the following manner:

(1) If the work be printed, this consent is only necessary after the death of the author during the time for which his heirs, assigns, or representatives enjoy copyright.

(2) If the work be posthumous, it cannot be represented

(*a*) The provisions are similar to Arts. 588 and 589 of the Portuguese Law. *ante*, p. 633.

without the consent of all the heirs or any other person who has property in the manuscript.

(3) The permission to represent a dramatic work may be given for a certain period, a certain place or several places, or for a certain number of theatres.

Art. 26. If the permission be limited, and the work has been put on the stage of a theatre not included in the permission, the net receipts of the representation or representations thus given belong to the person whose consent was necessary.

Art. 27. The author's share of the receipts of a representation cannot be seized by creditors of the theatrical venture.

Art. 28. A dramatic author who has assigned by agreement the right of representing his works, enjoys the following rights unless he has expressly renounced them.

(1) To make such changes and improvements as he shall judge necessary, on condition that he does not alter any essential parts without the consent of the manager.

(2) To require that the work so long as it is in manuscript shall not be communicated to any person outside the theatre.

Art. 29. An author who has contracted with a manager for the representation of his work, cannot, while the contract holds good, assign to any other manager in the same locality either the original text or an imitation.

Art. 30. If the piece has not been represented within the period agreed upon, or in the course of the first year where no period has been expressly fixed, the author is free to withdraw his work.

Art. 31. The judicial authority shall decide all disputes arising between authors and theatre managers.

Chap. III.—Artistic Property.

Artistic property.

Art. 32. The author of every musical work, drawing, painting, sculpture, or engraving has the exclusive right of reproducing his work by engraving, lithography, sculpture, or any other process in conformity with the provisions established in matters concerning literary property.

The provisions laid down in the preceding chapter in favour of dramatic authors are wholly applicable to authors of musical works in regard to their performance in theatres or any other places where the public are only admitted by payment.

Chap. IV.—Obligations common to Authors of Literary, Dramatic, or Artistic Works.

Obligations. *Art.* 33. To enjoy the advantages granted by this law, the author or the proprietor of every work reproduced by typography, lithography, engraving, sculpture, or any other process, must observe the following provisions:

Deposit. *Art.* 34. Before putting on the market copies of any published work he must deposit a copy with the Minister of Public Education, a second with the Procureur of the District, and a third at the library of the seat of Government. A receipt must be given for these deposits, which must be entered on the registers established for this purpose free of charge.

If a musical or dramatic work be in question, or a work relating to musical instruction (*a*) or art, copies must be deposited in the manner prescribed in the preceding article. If the work be a lithograph, an engraving, or a sculpture, or a work relating to one of these arts, the deposit and registration must be made in the same manner with the Council of Education. Nevertheless in this case the author may deposit the original drawings in place of the copies.

Art. 35. The library and institutions mentioned in the preceding article must publish the registrations respectively made by them in the Municipal Bulletin.

Art. 36. Certificates extracted from the register aforesaid are presumptive evidence of the copyright in the work with the results flowing from such right, subject to proof to the contrary.

Arts. 37 to 42 relate to the penalties for piracies. The provisions are practically identical with Arts. 607 to 612 of the Portuguese Code (*b*).

Rights of Foreigners.

Foreigners. The rights of foreigners are efficaciously protected by Art. 9 of the law of 13th August, 1879, which is as follows:

"Foreign authors shall enjoy the same advantages as those which are accorded to Bolivian authors resident in the foreign country."

This is a liberal provision, as most countries permit foreign

(*a*) The corresponding section of the Portuguese Code says, "relating to dramatic literature or musical art": it may be doubted whether the difference does not lie only in the fact that the two laws have had different French translators.

(*b*) See *ante*, p. 636.

residents to acquire copyright. The rights of foreigners in the matter of translations are, however, cut down by the 8th Art. given above (*a*); and, in order to acquire copyright in Bolivia, foreign authors must comply with the formalities required by Art. 34.

Bolivia was one of the signatories of the Montevideo Convention and the Pan-American Convention, but she has only ratified the former (*b*). She has a treaty with France, dated the 8th September, 1887, by which the subjects of either country enjoy on the territory of the other the same rights of copyright as natives.

BRAZIL.

History of copyright legislation.

Legislation in Brazil on the subject of copyright is of modern growth, for with the exception of some crude provisions in the Criminal Code of 1830, the monarchy was entirely opposed to any such legislation.

When the form of government was altered to a republic in 1889 a new Penal Code was promulgated (11th October, 1890), which contained a special chapter on literary and artistic property, which is still in force; and the Constitution of 24th February, 1891, by Art. 72, s. 26, provided that "authors of literary and artistic works are guaranteed the exclusive right of reproducing their works by printing or any other mechanical process. The author's heirs shall enjoy this right for the period that the law shall determine." No law was, however, passed until the 1st August, 1898, when the law which now mainly regulates copyright in this country came into force. This law repeals "all contrary provisions" in other laws, and this, it is conceived, practically amounts to a repeal of the provisions of the Penal Code of 1890, so far as they relate to copyright, except as to penalties.

The law of 1st August, 1898, is as follows (*c*):

Law of 1st August, 1898.

Art. 1. The rights belonging to the author of a literary, scientific, or artistic work consist of the exclusive liberty of reproducing or authorizing the reproduction of his work by publication, representation, performance, or any other means whatsoever.

Art. 2. Defines literary, scientific, and artistic works nearly in the words of Art. 4 of the Berne Convention as comprehending "books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or

(*a*) *Ante*, p. 694. (*b*) 5th November, 1903.
(*c*) Translated from the French translation in 'Le Droit d'Auteur,' 1898, p. 101.

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without words; works of painting, sculpture, architecture, engraving, lithography, photography; illustrations of all sorts; charts, plans, and sketches; in fact, every production whatsoever in the literary, scientific, or artistic domain."

Duration of copyright.

Art. 3. The following are the periods of protection: (1) For the right of reproduction in any form whatsoever, fifty years from the 1st January of the year of publication; and (2) for the right of translation, public representation, and performance, ten years, dating in the case of translations from the 1st January of year of publication, and in the case of public representations and performances from the first authorized representation or performance (*a*).

Assignability.

Art. 4. Copyright is personal property, assignable and transmissible in whole or in part, in conformity with the following rules: (1) Assignments *inter vivos* shall only be valid for thirty years, after which the copyright, if still subsisting, shall revert to the author; (2) at every new edition the author has the right to either correct and revise his work or regain his copyright on making compensation to the assignee as prescribed by this law.

Art. 5. An assignee of copyright may not modify the work for sale or exploitation.

Art. 6. In the absence of a legal publishing agreement the copyright is presumed to remain vested in the author, and the publisher must pay the author at least one half of the sale price of the whole edition.

Art. 7. Copyright is protected from the author's creditors.

Posthumous works.

Art. 8. Posthumous works are protected for the same periods as prescribed in Art. 3, but the right of translation and public performance runs from the 1st January of the year in which the author dies.

Collaborations.

Art. 9. Collaborators, in the absence of agreement to the contrary, enjoy equal rights, and the authorization of all is necessary for reproduction. Disputes are to be determined by the courts.

(*a*) Art. 345 of the Penal Code of 11th October, 1890, forbids the reproduction of any literary or artistic work by means of printing, engraving, lithography, or any other mechanical process during the life of the author or of the person to whom he has assigned his property (!) and ten years after his death, if he leave heirs; and as to translations, Art. 347 simply forbids to translate and sell any writing or work without the author's leave; and Art. 348 likewise forbids public performance of musical and dramatic works. It will be noticed that the provisions of the law of 1898 are conceivably less favourable to the author than those of the Penal Code of 1890, for, under the former, copyright might possibly cease whilst the author was still living. As Art. 72 of the Constitution has enacted "that the *heirs* of authors shall enjoy this right during the period that the law shall determine," could the provisions of the Code of 1890 (as we have seen, not necessarily repealed) be invoked if they were more favourable to the author than those of the law of 1898?

Art. 10. The consent of one collaborator is sufficient to authorize the stage production of a theatrical work, but the others are to be indemnified.

Anonymous and pseudonymous works.

Art. 11. In the case of anonymous and pseudonymous works the copyright is vested in the publisher until the author makes himself known.

Art. 12. Translations are protected as original works, but the translator can only prevent other translations during the period mentioned in Art. 3 (2).

Formalities.

Art. 13. In order to obtain copyright it is indispensable to register and deposit at the National Library within two years expiring on the 31st December of the year following that in which the term fixed by Art. 3 commences to run: (1) one perfect copy of a work of art, literature, or science, printed, photographed, lithographed, or engraved; (2) a perfectly clear photograph of minimum dimensions of 18 by 24 centimetres of works of painting, sculpture, architecture and design, sketches, &c. (*a*).

Performing rights.

Art. 14. The right of performance of a literary work is regulated by the provisions as to musical works.

Musical compositions.

Art. 15. No public performance or execution, in whole or part, of a musical work may take place without the author's consent; but after a work has been published and put in sale it is understood that the author gives his consent to its performance where no payment is exacted.

Art. 16. Copyright in a musical work includes the exclusive right to make arrangements and variations in the *motifs*.

Artistic works.

Art. 17. The transfer of an artistic work does not carry the right of reproduction for the profit of the proprietor of the work; but the artist may only reproduce it if he declare that the work is not original.

Art. 18. The reproduction of a work of art by industrial processes, or the application of a like work to industry, does not deprive a like work of its artistic character; but it remains subject to the provisions of this law.

Piracy.

Art. 19. Any deceitful or fraudulent infringement of copyright constitutes the offence of piracy. Any one knowingly selling piracies, exposing them for sale, having them on his premises for sale, or importing them into the country for commercial purposes, is guilty of the same offence.

(*a*) Regulations as to registration and deposit were issued on 11th June, 1901. A demand for registration must be addressed to the director of the National Library, and the demand must indicate nationality, profession, domicile of the author, title of work, place and date of first publication, reprinting, representation or performance, and all essential elements of the work. A fee of two milreis is charged for registration.

Art. 20. Accomplices are subject to the same penalties as the authors of these offences.

Art. 21. The following are to be considered piracies: (1) translations of foreign works (*a*); (2) reproductions, translations, representations, and performances, without the consent of the author, if necessary, when modifications, additions, or suppressions have been made to the works without the author's consent.

Not piracy.

Art. 22. The following will not be considered piracies: (1) reproduction of passages or fragments of published works, or the insertion, entire, of short writings in the body of a large work, provided the latter be a scientific work or a compilation of writings of various authors, composed for the purpose of public instruction, the source to be acknowledged; (2) reproduction in journals or periodicals of news, political articles, extracts from other journals and periodicals, or the reproduction of speeches at public meetings of whatever nature. The journal from which the extracts are taken should be named, and the author alone has the right to publish an article or a speech separately; (3) reproduction of official and state documents; (4) reproduction, in books and journals, of passages for criticism or polemics; (5) reproduction, in the body of a writing, of works of figurative art to illustrate the text, on condition of expressly naming the author; (6) reproduction of works of art found in streets or public places (*b*); (7) reproduction of portraits or busts executed on commission, when made to the order of the proprietor of the object.

Penalties.

Arts. 23 to 47 relate to the penalties for infringement and procedure for recovery thereof. Under the Code Penal fines were inflicted and confiscation of piracies decreed, but the fines were ridiculously small, and operated rather as an encouragement than a deterrent to piracies. The provisions of the Code Penal as to penalties are expressly retained by Art. 23 of the law of 1898, but, in addition to the fines, the pirate is now made liable in damages, and the piracies and all instruments of piracy are liable to confiscation. Unauthorized performances of musical and dramatic works are punished by forfeiture of the receipts and imprisonment. One collaborator may sue for infringement without joining the others.

(*a*) See this clause more fully set out *post*, Rights of Foreigners.

(*b*) As to what are "public places," compare the Swiss decisions under a similar clause, *ante*, p. 650.

Rights of Foreigners.

Foreigners.

The Penal Code of 1890 left it doubtful whether foreigners could claim protection under its provisions, but this doubt was set at rest by Art. 72 of the Constitution of 24th February, 1892, which restricted rights of property to "Brazilians and foreigners resident in the country." The law of 1898 is likewise conceived in a strictly national spirit, Art. 1 providing that the rights thereby accorded are conferred "upon natives and foreigners residing in Brazil (*a*) according to the terms of Art. 72 of the Constitution, provided they fulfil the conditions established by Art. 13."

There is, however, one clause in the law of 1898 that seems to afford some protection to foreign works. Clause 21 (1) is in the following terms: "Translations of foreign works in the Portuguese language, not expressly authorized by the authors and made by foreigners not domiciled in the Republic, and not printed there, are to be considered piracies. Authorized translations must bear the inscription 'translation authorized by the author,' and such alone may be imported, sold, or performed in the territory of the Republic." Though the object of this article is, admittedly, simply to exclude the wretched translations that had been previously freely imported from Portugal in large quantities, it may operate indirectly to give some protection to the foreigner (*b*).

Brazil has a treaty with Portugal, dated the 9th September, 1889, by which the two countries reciprocally assured to authors writing in the Portuguese language and artists of either of the two countries the protection to which natives are entitled in either country. A treaty, concluded on the 31st January, 1891, with France—which country has suffered particularly from Brazilian piracies—was rejected by the Brazilian Chamber.

Brazil signed the Convention of Montevideo, but it remains unratified by her.

CHILI.

Copyright in literary and artistic works is regulated in Chili by the law of the 24th July, 1834, and is further sanctioned by the Civil Code of 1855, Art. 584. Authors can take civil proceedings for damages under Art. 2314 of the Civil Code, or proceed criminally against the offender

(*a*) The law does not state what length of residence is necessary.
(*b*) See 'Le Droit d'Auteur,' 1898, p. 114.

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under Art. 471 of the Penal Code, which provides that the punishment of minor transportation or banishment (*a*), or a fine of 100 to 1000 pesos may be inflicted on any person who commits any fraudulent act relating to literary or artistic property, and that copies, implements, or articles pirated, fraudulently imported or circulated, may be confiscated for the benefit of the injured person, and that engraving plates and implements used for the committal of the offence may be confiscated where only useful for that purpose.

The law of 24th July, 1834, provides as follows (*b*):

Duration.

Art. 1. Authors of any kind of writing, or compositions of music, painting, drawing, or sculpture, and, in short, all persons to whom the first conception of a work of literature or *de belles lettres* belongs, shall have the exclusive right during their life of selling, causing to be sold, or circulating in Chili reproductions of their works, whether by printing, lithography, moulding, or any other process intended to reproduce or multiply copies.

Art. 2. Their legatees or heirs shall enjoy the same right for five years, which may be extended to ten, if the government thinks fit; but if the inheritance devolves on the treasury, the work shall become public property.

Art. 3. Authors and their heirs may transfer their rights to any person.

Posthumous works.

Art. 4. The proprietor of the MS. of a posthumous work shall enjoy copyright for ten years, with no extension: the period shall run from first publication, and on condition that the work is published separately and not in an edition comprising the works of the author published in his lifetime: in this case the posthumous work shall share the fate of those works.

Art. 5. The possessor of posthumous MSS. containing corrections of a work published in the lifetime of the author shall enjoy copyright for ten years, with no extension, on condition that he brings the MSS. before the ordinary court in the year following the death of the author, and clearly proves that they are his.

Dramatic works.

Art. 7. Theatrical pieces shall, in addition, be protected against representation in any theatre in Chili without the written consent of the author or his heirs during the life of the author and five years from his death, during which latter period the copyright belongs to the heirs.

(*a*) Enforced residence in a fixed locality.
(*b*) From the French translation in 'Lois françaises et étrangères,' par M. Lyon-Caen.

Art. 8. When a work has been composed by a body of several persons, they shall enjoy copyright for forty years from first publication.

Art. 9. Translators of works and their heirs shall enjoy the same rights as authors and their heirs.

Art. 10. To enjoy the rights given by these articles, it is not necessary to obtain any title from government, but it will suffice to deposit three copies of the work at the public library of Santiago and to mention the proprietor at the head of the work. Deposit.

Art. 11. The government may grant an exclusive privilege for five years to persons reprinting interesting works, provided the reprint be correct and handsome.

Art. 12. If the author or publisher do not desire to enjoy copyright, and do not fulfil the formalities prescribed by Art. 10, the printer must deposit three copies as aforesaid.

Art. 13. Printers must also deposit at the library two copies of every periodical, paper, or separate publication printed by them, and send one copy to the Ministry of the Interior and one to each Procureur fiscal.

Art. 14. After the expiration of the periods previously mentioned, every work shall become public property, and any person may take advantage thereof as seems good to him.

Art. 15. If any person reprint, engrave, or imitate the work of another, or contravene in any way the provisions of this law, the person interested may bring him before the judge, who shall decide the matter summarily according to the laws in force relating to encroachments on the property of another. Piracy.

Art. 584 of the Civil Code of 1855 provides that the productions of talent or intellect are the property of their author. This property is regulated by special laws.

Rights of Foreigners.

Art. 6 of the law of 24th July, 1834, provides "that foreigners who publish their works in Chili shall enjoy the same rights as Chilians, and if they publish in Chili a new edition of works published in another country, they shall enjoy like rights for ten years." This clause seems a model of bad draftsmanship. Literally construed, foreigners publishing at any time in Chili would obtain copyright, and the foreigner publishing a new edition would apparently not need to be the proprietor of the copyright in the author's native country. Whether such a literal construction would prevail Foreigners.

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is not, however, certain. At any rate, the foreigner must make the deposit required by Art. 10. Chili has signed the Convention of Montevideo and the Pan-American Convention, but, hitherto, she has ratified neither. On the 25th May, 1896, the United States proclaimed Chili as being entitled to the benefit of the Chace Act, and by a treaty with the same country, dated the 6th December, 1898, it was agreed that publications made in violation of the copyright laws of the country of destination should not be allowed to be carried as postal packages between the two countries.

COLUMBIA.

Law of 20th October, 1886.

Copyright in Columbia is governed by the law of the 20th October, 1886, which has taken most of the provisions of the Spanish law of the 10th January, 1879.

The law of 1886 on literary and artistic property is as follows (*a*):

Definitions.

Definitions and general provisions.

Art. 1. Literary and artistic property, or copyright, consists in the privilege accorded to authors by law of profiting by their works, during a fixed period and in consideration of certain previous formalities.

Art. 2. For the purposes of the law, an author means a person who has produced an original work; also a person who recasts or compiles, or who makes an abridgment or summary of another work, on condition that in these various works he keeps within the limits allowed by law and international treaties.

Who entitled to copyright.

Art 3. The benefits of this law can be claimed by any Columbian who publishes a work in a foreign country, even in a country with which there is no literary convention.

Art. 4. Any person who first publishes an unpublished work, not belonging to any person, from a manuscript of which he is the proprietor, is equivalent to an author.

Art. 5. The State, corporations, and persons constituted by law also enjoy literary copyright, so long as they have a legal existence.

Art. 6. For the purposes of this law, a literary or artistic work means any original production resulting from individual effort or labour of intellect, imagination, or art.

Not only works completely original are considered to belong to the person producing them, but also those of which the

(*a*) Translation taken from 'Lois françaises et étrangères,' par M. Lyon-Caen.

elements, though drawn from other authors, have been selected with discernment, clothed with a new form, and intelligently adapted to a purpose more or less general.

Art. 7. Ideas, philosophical or scientific, conceptions or systems, and other parts of human knowledge, apart from the particular form with which the author or artist has clothed them, do not constitute private property and may be freely presented under new forms.

Art. 8 relates to scientific discoveries and inventions.

Art. 9. Every work of the intellect, after having been published by printing, engraving, or any other analogous process, and after the fulfilment of the legal formalities, constitutes a property regulated by the ordinary law without other limits than those resulting from the law.

Duration.

Art. 10. Literary and artistic property belongs to authors for life, and after their death to persons lawfully acquiring it for eighty years.

Art. 11. Literary property is subject to the restrictions imposed on the press by Art. 42 of the Constitution.

Literary copyright is also subject to restraint by the censorship to which the government may, according to the laws, subject dramatic representations for reasons of public morality or public honour.

Restrictions on publication.

Art. 12. No one may reproduce a work in whole or in part without the consent of the author. This prohibition applies in the case of literary or artistic works, not yet published or registered, which have been taken down in shorthand, or by notes, or copied, during a public or private reading, performance, or exhibition.

Art. 13. Any person may freely reprint works become public property; but if the works are by a known author it is not permissible to suppress his name or to make interpolations in the work, without making a suitable distinction between the original work and the modifications or additions so made or introduced.

Transfer.

Art. 14. Literary property is transferable like all personal property. The author may assign it gratuitously or for value, in whole or in part. In the absence of express stipulation, the assignee will take the rights belonging to the author or his heirs.

The author may also by an express declaration abandon his work to the public.

Art. 15. In the case of transfer by acts *inter vivos*, literary property belongs to the purchasers for the life of the author

and eighty years after his death, if he does not leave heirs of necessity. If he leave such heirs, the right of the purchaser will last for twenty-five years after the death of the author, and will then revert to the heirs of necessity for fifty-five years.

Art. 16. The assignee has no right to introduce changes or modifications into the work without the leave of the author or his family after his death.

Art. 17. An author entrusted with the preparation of a literary or artistic work for an agreed remuneration does not acquire any right of property in it.

In such case, the property belongs to the employer, and the person executing the work has only a right to the promised remuneration.

Transitory provisions.

Art. 18 (*Transitory*). The prolongation of literary copyright shall benefit authors whose privilege has not expired at the date of the promulgation of this law, and also their assigns in like case, but they must register.

Art. 19 (*Transitory*). Authors whose privileges have expired may also recover their copyright and enjoy the new benefits given by this law, on condition of fulfilling the formalities of registration and deposit, or only the formality of registration if the work be out of print.

Publishers who have reprinted such works during the period when they were public property, may continue to sell the copies already printed, on condition of having them counted and stamped, under the superintendence of the author, in order to prevent any fraudulent reprinting.

Art. 20 (*Transitory*). The widow and surviving children of a Columbian author may also recover copyright according to the conditions prescribed by the last article.

Penalty of non-registration.

Art. 21. If a work be not registered in the prescribed period, it becomes public property for ten years from the day of failure to register.

Art. 22. During a period of a year from the expiration of such ten years, the author or his assign may recover the copyright on condition of registration, but he cannot prevent the sale of copies lawfully printed during the period of forfeiture. But he may use the precaution mentioned in Art. 19 (2). If the author does not take advantage of the second opportunity, copyright is lost for ever.

Art. 23. When works are published in successive parts, and not at one time, the periods fixed by the preceding articles only run from the completion of the work.

Art. 24. An author who bequeaths a manuscript of his own, or who enjoys copyright in a printed work, may by will suspend the printing or prohibit the reprinting for eighty years.

Registration.

Art. 27. A general register of literary property is to be opened at the Ministry of Public Education, and special registers in the secretary's office of the provincial governments.

The general register includes the entries directly requested by authors or their attorneys, and also the entries made in the provincial registers which the provincial governors must transmit every six months.

Art. 28. In order to obtain the advantages of this law, the person interested must request and obtain the making of the entry which concerns him, in the general or provincial register, and this within the period and according to the formalities indicated in this law. A certificate of registration, delivered to the person who registers a work, is *primâ facie* evidence of title until proof to the contrary is given.

Art. 29. Registration is regulated by the following provisions:

(1) The request for registration must be made according to the form published by the Ministry of Public Education.

Deposit.

(2) If the work be printed, three signed copies must be deposited, one for the Ministry of Public Education and the two others for the National Library. If registration be made in a provincial register, the governor must transmit two copies to the Ministry aforesaid, one for the Ministry and the other for the National Library: the third must be delivered to the provincial library if there be one, or to some other public institution of the chief town of the province.

(3) If the work be a periodical, registration and deposit must be made of a collection of numbers, not exceeding six months. Registration effected by the proprietor of a periodical magazine secures at the same time protection of the author's rights and the right of reproduction belonging to his collaborators.

(4) If the work has been represented in public, but not printed, a single MS. copy must be deposited.

(5) In the case of a work of art which is unique, such as a picture, bust, or any other work of painting or sculpture, there is no necessity to register or deposit, but the work will be protected in spite of the omission.

Art. 30. Registration may be made within one year from the

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publication of the work; but the author enjoys protection from the date of publication: protection will not be lost unless the provisions of the law are not fulfilled within the year.

Art. 31. There is no fee for registration.

Art. 32. Every assignment of literary or artistic property must be made by a legal document to be entered on the proper register; in default of this formality, the purchaser cannot avail himself of the right.

The law, or if there be none, the regulation made for the execution of the law, is to fix a duty on the transfer of literary property.

Letters.

Art. 33. Letters are the property of persons to whom they are sent, but not for purposes of publication. This right belongs only to the writer, except where publication of a letter which is to be used as evidence in legal proceedings, is authorized by the court having jurisdiction.

Art. 34. Letters of deceased persons may not be published within eighty years from their death without the permission of the family council.

Lectures and speeches.

Art. 35. A paid professor preserves the right of publishing his lectures, subject to any stipulation to the contrary.

Art. 36. Parliamentary speeches, if published officially, may be freely reproduced in the papers or magazines.

But the parliamentary speeches of one speaker cannot be published in a separate collection without his permission.

Anthologies.

Art. 37. It is lawful to quote from an author with a transcription of the required passages, provided the passages taken be not so numerous or consecutive as to be liable to be considered as a literal imitation which may cause damage to the original work.

Art. 38. It is lawful also to reproduce selections, in verse or prose, in collections intended for schools or with a special literary aim, on condition that no injury is done to any author by reason of the number of pieces taken from him, and that the reproduction is not made against the express wish of the poet or writer.

The author of an anthology or a selection only acquires, on the ground of his work of compilation, property in the novel arrangement adopted by him, and in the prefaces, notes, and commentaries added by him.

Translations and abridgments.

Art. 39. Translations and abridgments of a work cannot be made without the author's consent, unless they be foreign works (*a*).

(*a*) See Rights of Foreigners, *post*.

Art. 40. Translators and persons who make abridgments are proprietors of their own translation or abridgment, but unless they have acquired from the author the sole right of presenting his work in the new form, they cannot oppose the publication of other translations or abridgments, every translation or abridgment constituting property in favour of the person making it.

Art. 41. If a question arise before the court whether a translation or an abridgment, where there are slight variations, but where the intellectual work does not justify copyright, is only an imitation of a previous translation or abridgment, the court is to take the advice of experts.

Compilations.

Art. 42. Compilations of works or of information which are public property, constitute private property if they present a work novel in its method and arrangement.

A compiler cannot oppose other persons making a work of the same kind, if they follow a new method with a distinct difference of form.

Art. 43. A person who reduces a work, which is public property, to smaller dimensions, or extracts the substance of it in any manner, is the proprietor of his personal work, and may prevent any reproduction of it, but he cannot prevent other persons publishing other *résumés* of the same work.

Art. 44. A collection of songs and popular tales constitutes property when it is the result of direct investigations made by the author or by his agents, and is on a special literary plan.

MSS.

Art. 45. MSS. preserved in the archives and public libraries cannot be copied or published without the permission of the proper authority.

This permission is to be granted by government to the person who first asks for it, and there shall be allowed to him a period not exceeding three years for publication, and the profits as sole publisher for a period of ten to forty years according to circumstances, in order to stimulate the publication of old or curious MSS.

If at the expiration of the period fixed, the grantee has not published the work, he loses the entire rights.

Anonymous works.

Art. 46. The publisher who, as assignee, exercises the rights of proprietor, is to be considered the proprietor of anonymous or pseudonymous works, until the author establishes his title.

If the author make himself known, he is to be substituted for the publisher in the rights belonging to him.

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Posthumous works.

Art. 47. Not only works published after the death of an author, but also works published orally during his life and printed only after his death, are to be considered posthumous works; also printed works which the author at the time of his decease has left so remodelled, augmented, or corrected that they can be considered new works.

Art. 48. The proprietors, by inheritance or any other title, of a posthumous work have copyright in it; they may print it separately or jointly with other works which are still private property.

But they may not publish it with works become public property, under penalty of losing their copyright.

Collaborative works.

Art. 49. The author or editor (*directeur*) of a collective work is the proprietor of it, and he is under no other obligations to his collaborators than those imposed upon him by agreement. The agreement may contain different terms.

A collaborator who does not reserve to himself by express stipulations any right of ownership, can only claim the payment agreed upon, and the editor of a collective work to which he gives his name is to be considered as the author in the eye of the law.

Art. 50. Works made in collaboration constitute an indivisible work so long as they are kept together in the form in which they were produced; and the duration of the second period of copyright commences from the death of the surviving collaborator.

But each of the collaborators may freely dispose of the part contributed by him, if a stipulation to this effect has been made at the time when the joint work was entered on.

Newspaper articles.

Art. 51. The editors or managers of papers, subject to agreement to the contrary, have only the right of once publishing articles by writers whom they pay. These writers preserve the property in their works and the right of publishing them in such form as they think fit.

Art. 52. Productions published in papers can be reprinted in other papers under the express condition of naming the paper from which they are taken.

Exception must be made where notice is formally given in the paper that the editor or author reserves the right of reproduction of special articles.

Art. 53. Where the title of a work is not generic, but is characteristic and particular, as happens particularly in the case of the na of papers and reviews, this title cannot, without the proprietor's permission, be adopted for an analogous

work of such kind that the public may have doubts between the two, or that the second may be considered a republication of the first. This is a case of piracy.

Official documents.

Arts. 54, 55, and 56 provide that laws, regulations, and official documents may be reproduced by anybody; pleadings, &c., belong to the parties; but permission of the court is necessary for the publication of a copy or extract from a judgment.

Dramatic and musical works.

Art. 57. No person may perform, in whole or in part, in a theatre or any public place, a dramatic or musical composition without the previous consent of the proprietor (*a*).

Art. 58. The proprietors of dramatic or musical works may, in giving permission, fix at pleasure the royalties payable for representation; if they do not fix them, they can only recover the royalties established by regulation.

Art. 59. Ballads are public property, and a person publishing them has no exclusive right of restraining their communication.

Art. 60. Musical compositions, as well as arrangements, variations, &c., on a theme or air which is public property, constitute property for the benefit of the author or composer.

Arrangements of this nature, if founded on an original composition, are subject to the previous authorization of the original author.

Transpositions are assimilated to translations in literary subjects; the question whether they constitute an unlawful reproduction may only be decided after a report of experts.

Works of painting and sculpture.

Art. 61. Any person may stop his bust or portrait being exhibited or sold without his consent; but no one may deprive a dealer acting *bonâ fide* of the possession except by paying him an equitable compensation.

The permission of the family is necessary for the reproduction or sale of a bust or portrait of a deceased person.

A final and perpetual assignment of the right of publishing a portrait can only result from a formal contract.

Art. 62. The question whether a painter or a sculptor preserves the right of exclusive reproduction, by engraving or analogous process, of a work which he has alienated, is generally to be answered in the negative, and in particular cases, according to the stipulations of the contract of alienation.

Piracy.

Any person who registers or sells as his own, or who publishes as public property a work of private property, commits a fraud or forgery in respect of literary property;

(*a*) But as to foreigners, see Rights of Foreigners, *post*.

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also any person who violates in any way the rights recognized by this law.

Art. 64. Piracy executed in a foreign country also constitutes the offence if the products be sold in Columbia. The liability falls not only on the importer, but the consigner from abroad, and the consignee who introduces them.

Art. 66. Also a printer who keeps for himself a larger number of copies than belongs to him under his agreement with the author.

Art. 67. The following are considered aggravating circumstances: the reproduction, executed abroad, of the work of another, if it be afterwards imported into Columbia; the alteration of the title, the adulteration of the text, and all other alterations of the truth maliciously committed to the injury of the author.

Penalties. *Art.* 68. Pirates are punishable with a fine varying from the amount of the injury caused to treble this amount; in addition, confiscation may be ordered of all pirated copies to be delivered to the injured party.

Art. 69. If the author of a piracy be not known, the publisher, printer, and vendor are to be successively responsible, subject to their right of proving that they acted in good faith, by surprise or by mistake.

Art. 70. Any person who imports from a foreign country copies of an unlawful publication will be obliged in every case to hand over the copies in his possession to the injured proprietor and to pay to him the value of those sold.

If it be proved that the author has given notice to booksellers in good time of a pirated publication and that they have subsequently introduced copies of this publication, in addition to the penalties above indicated, a fine of 100 to 500 francs will be inflicted on them; in case of a second offence, in addition to the other penalties correctional imprisonment for a period of from two to six months.

Not piracy. *Art.* 71. As doctrines, opinions, and systems do not constitute literary property within the terms of Art. 7, a person who reproduces ideas, while changing their form, arrangement, or performance, will not be considered a pirate.

But if he attribute to himself a method or system invented by another, the injured author is to have a civil action and be able to obtain from the Courts an order that his name be indicated and the honours of the invention attributed to him.

Jurisdiction. *Art.* 72. The ordinary courts are competent to try all questions raised by frauds in respect of literary property, and to

decide the civil actions which private persons are entitled to bring in defence of the rights given to them by this law. The right of action always belongs to the proprietor of the work, or to the person who has acquired the right of another or is his legal representative.

French and Spanish law to be followed.

Art. 73. If a contest arise on the question whether there has been a lawful reproduction of ideas in a work, or an unlawful reproduction of materials belonging to another, the judge or court which has cognizance of the case, may order an examination or reference to experts, and in the absence of previous decisions settling the law, is to specially adhere to the principles sanctioned by French and Spanish law in relation to literary and artistic property.

Rights of Foreigners.

Foreigners belonging to Spanish speaking colonies.

In treating the rights of foreigners the law of 1886 draws a distinction between Spanish speaking countries and others, as appears from the following clauses:

Art. 25. Authors, natives of countries where the Spanish language is spoken, and the legislation of which accords literary copyright, shall, within the limits of this law, enjoy in Columbia the rights hereby given by means of a civil action before a judge having jurisdiction, without the necessity for any treaty or diplomatic intervention.

Art. 65. It is also piracy to reproduce in Columbia copyright works, printed in Spanish in countries with which reciprocity exists in respect of literary property.

Other foreigners.

Authors of countries not falling within the above category, can only obtain protection in Columbia by virtue of treaties; but treaties are difficult to arrange, by reason especially of Article 26 of the same law, which declares: "No reservation of the right of translation can be made in International Conventions entered into by the Government, except in the case of works written in a foreign language, and printed in a country where Spanish prevails, as, for example, works in Latin, Basque, or Catalan, printed in Spain." Again, Article 39, which forbids unauthorized translations, adds: "But works of a foreign author, printed in a country with a foreign language, may be freely translated wholly or partially on the single condition that the author's name is not concealed"; and yet again, Article 57, forbidding unauthorized performances of dramatic and musical works, adds: "If the work be a foreign one, originating from another country where the Spanish language is

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spoken, and with which reciprocity exists in respect of literary property, the above prohibition shall refer only to works the authors of which expressly reserve the right of representation." There is, it will be noticed, a marked distinction between the language of Article 39 and Article 57, the former expressly stating that foreign works may be freely translated, but the latter making no such express declaration as to the right of performing foreign musical and dramatic works. From this difference in language it might perhaps be contended that foreigners are to be protected in their performing rights, but such a construction is rather strained. Columbia has signed, but not ratified, the Pan-American Convention. She has also a treaty with Spain, dated the 28th November, 1885, containing the most-favoured-nation clause, and one with Italy, dated 27th October, 1892 (*a*). A treaty with San Salvador, signed on the 24th December, 1900, does not appear to have been yet ratified by Columbia.

COSTA RICA.

Law of 26th June, 1896.

At the date of the last edition of this work Costa Rica had no special law on the subject of copyright, but a complete law has since been passed—viz., on the 26th June, 1896. The main provisions of this law are as follows (*b*):

Art. 1. Intellectual property is of the same character and subject to the same rules as movable property.

Art. 2. It includes all kinds of scientific, literary, and artistic works, by whatever means produced.

Duration.

Art. 3. Copyright lasts for the life of the author and fifty years after his death (*c*).

Title of alience.

Art. 4. In case of alienation, the alienee becomes the proprietor of the copyright during his life and then his successors are entitled for twenty years after, but after that period the copyright re-vests in the author or his heirs or legatees for a period of thirty years.

Art. 5. In case of failure of heirs, the property falls into the public domain.

Art. 6. The State, communes, official and private corporations, are entitled to the benefits of this law, but, except in the case of private corporations, copyright will last for twenty-five years only.

(*a*) These treaties may be found in the Collection of Copyright Treaties recently published by the International Bureau at Berne.
(*b*) From the French translation in 'Le Droit d'Auteur,' 1896.
(*c*) But see Art. 63 *et seq.*

Art. 7. Literary and scientific works belong to their authors, and may not, under any pretext, be published or translated without their consent.

Literary copyright.

Art. 8. Private letters cannot be published without the authorization of the writers.

Art. 9. No one may reproduce the works of another without the permission of the proprietor.

Art. 10. It is permissible to publish commentaries, supplements, notes, and critical observations on the subject of the work, provided no more of the text be taken than is necessary for this purpose.

Performing rights.

Art. 11. Unauthorized publication is forbidden of scientific or literary productions recited, played, or performed in public or private, and noted, stenographed, or obtained by phonograph or any other means; and (Art. 12) the same applies to professional lectures in universities, colleges, and schools; but (Art. 13) these provisions are not to prevent the publication of extracts.

Official records, newspapers, &c.

Art. 14. It is permissible to publish in journals, pamphlets, books or sheets, public documents emanating from the government, provided they have been officially published, and the reproduction conforms to the official text; but (Art. 15) complete or partial collections of speeches delivered in Congress or in an official capacity may not be published without consent.

Art. 16. Periodicals may reproduce publications inserted in other periodicals, unless forbidden (*a*).

Art. 17. Authors and translators of productions inserted in journals or reviews may, in the absence of contrary agreement, publish them in collections.

Translations.

Art. 18. A translator enjoys copyright in his translation, but without the right to prevent other translations.

Art. 19. The possessor or publisher of a work may not alter it without the author's consent.

Art. 20. Unlawful works are not protected.

Anonymous and pseudonymous works.

Art. 21. The publisher of an anonymous, pseudonymous, or posthumous work has the rights of the author, but (Art. 22) the author, translator, or proprietor of an anonymous or pseudonymous work may obtain the copyright on proving his title.

Art. 23. The property in posthumous works belongs to the author's heirs or legatees for a term of fifty years (*b*).

(*a*) The Supreme Court of Justice in Costa Rica held, on the 14th July, 1903, that telegrams published in the Official 'Gazette' could, by virtue of Art. 14, be reproduced by newspapers, though the 'Gazette' purported to forbid such reproduction. Art. 14 is not confined to "official" documents. 'Le Droit d'Auteur,' 1904, p. 32.

(*b*) The law does not state whether this term runs from the author's death or from publication.

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Art. 24. Amongst posthumous works are included: (1) works which have never been published in the author's lifetime; (2) abridgments, transformations, annotations, or corrections amounting to a new work and left by the author at his decease.

Art. 25. When a work has been alienated, the courts are to decide whether the modifications are sufficient to make the work a new work within Art. 24 (2).

Dramatic and musical works.

Art. 27. The provisions as to literary copyright all apply equally to musical and dramatic works, save that (Art. 28) the exemption mentioned in Art. 10 does not apply to musical works.

Art. 28. The author's consent is necessary for altering a musical composition in any way by introducing accompaniments, making transpositions, arrangements, changing the text, &c.

Art. 29. No dramatic or musical work may be performed in whole or in part in a theatre or public place without the authorization of the author or proprietor, and (Art. 30) this prohibition extends to performances given by societies so constituted as to receive a money contribution.

Art. 31. Authors or proprietors of musical and dramatic works must determine the rights of performance, otherwise they can only claim those fixed by the executive power.

Art. 32. In the absence of contrary agreement, half of the rights belong to the author of the music and half to the author of the libretto.

Art. 33. Copies of unpublished dramatic or musical works may not be made, sold, or lent on hire, without the author's permission.

Art. 34. Authors of a lyrico-dramatic work may publish and sell their work separately.

Art. 35. If the author of the libretto of a lyrico-dramatic work forbids performance the author of the music may substitute another libretto, and *vice versâ*.

Art. 36. When a dramatic or musical work is performed in public the title may not be altered or the text curtailed, changed, or added to without the author's consent.

Art. 37. The rights belonging to the author or proprietor of a dramatic or musical work are not subject to the creditors of the manager of the performance.

Artistic copyright.

Art. 38. The author of a work of art has the exclusive right of reproduction by any means, without exception.

Art. 39. Authors of plans, sketches, designs, maps, and other like works enjoy the benefits of this law.

Art. 40. The provisions relative to literary works apply equally to artistic works.

Arts. 41 to 48 relate to patents.

Registration and deposit.

Arts. 49 to 62 relate to the formalities necessary to obtain copyright. Authors must register at the Office of Public Libraries, and deposit three signed copies of their works within a year from the day when the printing of the work is finished (*a*), without which no copyright can be obtained (*b*). (Art. 53.) In the case of musical and dramatic works which have been performed but not printed, it will be sufficient to deposit a signed manuscript copy (Art. 55), and in the case of artistic works, such as pictures, statues, architectural models, and such like works it will be sufficient to deposit an engraving, design, or photograph of the work. Registrations will be published in the official journal within eight days.

Retrospective operation.

The benefits of this law are extended to scientific, literary, and artistic productions produced before this law came into force, provided they are registered within six months from the date of its doing so.

Forfeiture of copyright.

Art. 63. Scientific, literary and artistic works, which have not been registered within the period appointed by law, fall into the public domain, but after ten years from the day when that period expires; authors or proprietors, or their heirs or legatees, have the right to recover the copyright on duly registering within a year, in default of which the work falls definitely into the public domain.

Art. 64. Likewise scientific, literary, and artistic works which have not been reprinted (*réimprimées*) by the author or proprietor within a period of twenty-five years, fall into the public domain.

Art. 65. Dramatic and musical works which have been registered and deposited in accordance with the provisions of Article 55 fall into the public domain, if they have not been published within thirty years from the date of registration.

Art. 68. It belongs to the Minister of Instruction to declare the forfeiture of the copyright in a work. Such a declaration is to be inserted within eight days in the official journal (Art. 69), and, if not, any interested person may require it to be inserted.

(*a*) What if the work be not printed? The law seems to make no special provision for this, and yet it is clear that pictures, &c., must be registered. The word used in the French translation is "impression."

(*b*) But see Art. 63.

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Penalties.

Art. 71. Infringers are punishable, civilly and criminally, as provided by Art. 496 of the Penal Code (*a*).

Art. 72. The persons responsible for fraudulent piracy committed by publication are successively, (1) the author of the piracy; (2) the publisher; and (3) the printer, unless they respectively prove absence of guilt. In the case of fraudulent piracies committed by performance or public exhibition (Art. 73) the persons responsible are, (1) the person on whose account the performance or exhibition is organised; or, in default, (2) the persons who perform or exhibit the work.

Rights of Foreigners.

Foreigners.

The last article of the law of 1896 provides that, "Foreigners resident abroad shall enjoy in Costa Rica the rights hereby conferred on natives and foreigners resident in the Republic, provided the laws of their nation accords equal advantages to citizens of Costa Rica."

Costa Rica has copyright treaties with the following countries: Spain (14th November, 1893) (*b*), Guatemala (15th May, 1895), Salvador (12th June, 1895), Honduras (28th September, 1895), and France (28th August, 1896), and the President of the United States on the 19th October, 1899, issued a proclamation according Costa Rica the benefit of the Chace Act, 1891. Costa Rica was one of the signatories of the Pan-American Convention, and this Convention was ratified by her on the 13th July, 1903 (*c*).

ECUADOR.

Art. 27 of the Constitution of Ecuador of 1884, provides that every person shall enjoy liberty of industry, and within the conditions fixed by law, the exclusive property in his discoveries, inventions, and literary works (*d*).

A law was passed concerning literary and artistic property on the 3rd August, 1887.

Literary and artistic property.

Art. 1. This law determines the rights of authors in literary

(*a*) The punishments are imprisonment, minor banishment (see note, p. 703, *ante*), or a fine of from 101 to 666 piastres. Copies and instruments of piracy are liable to forfeiture, as to the latter, only if they can be used for no other purpose.

(*b*) This treaty, however, only seems to have come into force on the 20th June, 1896, the ratifications not having been exchanged till that date.

(*c*) There is also a Convention, called the Central American Convention, signed but not ratified by Costa Rica, but this Convention does not appear to be of importance and will probably merge in the Pan-American Convention.

(*d*) 'Lois françaises et étrangères,' par M. Lyon-Caen, from which work the translation of the law of 1887 is taken.

and artistic works for the purposes of the protection laid down for their benefit by Art. 27 of the Constitution.

Definition of author of literary works.

Art. 2. The following are considered authors in matters of literature:

(1) A producer of a written or oral work.
(2) A translator.
(3) A proprietor of an unpublished work, not legally belonging to any other person, which he publishes for the first time.
(4) The compiler of historical or legislative documents, when the directors of the archives interested (in such subject) or the government have not anticipated him in this publication, and have accorded him permission to make it.
(5) The compiler of popular productions, such as songs, traditions, &c., provided that the publication is made with a literary object.
(6) The publisher or compiler of works which are no longer private property.

Definition of authors of artistic copyright.

Art. 3. The following are considered authors, in matters of art:

(1) The creator of a work.
(2) The composer of variations on a musical theme, on condition that these variations constitute in the opinion of experts a new creation.
(3) The compiler of popular musical works having no known proprietor.
(4) The author of transpositions or instrumentations made with the permission of the author of the original work.
(5) An artist, a geographer, an engineer, a draughtsman, a calligraphist, or a sculptor, each in respect of his original work and copies which can be made from it by any process whatsoever, unless, however, he has alienated the original.
(6) The reproducer of a work with the author's permission.
(7) The publisher of works of which the privilege has ceased.

Art. 4. The State and corporations clothed with the character of *personnes morales*, if they make publications in conformity with this law, enjoy the same rights as authors.

Art. 5. Literary and artistic works referred to in Art. 1456 of the Civil Code are not to enjoy the protection given by this law (*a*).

(*a*) Books of which the circulation is forbidden, and obscene pictures, &c.

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Art. 6. Except in the cases contemplated in Arts. 2 and 3 no work may be reproduced, in whole or in part, without the permission of the author, his heirs or assigns; and this permission ought to be mentioned on the reproduction of literary works.

Art. 7. Philosophical and scientific, &c., systems are not protected so far as they are organic systems of human knowledge, but only as work materialised by word or pen.

Nevertheless, the inventor of a system can apply to a judge to obtain recognition of his title as inventor against a person who has profited by the invention in a fraudulent manner (*a*). The decision of the judge must be published in the official journal.

Art. 8. Works relating to artistic or trade processes are subject to the provisions of this law, but the invention itself, the products, &c., to which the work is devoted, are to be regulated by the special law on such matters.

Duration.

Art. 9. The property is secured during the following periods:

(1) The life of the author, and fifty years after his death, as respects his heirs.

(2) Fifty years.

(3) Twenty-five years.

The benefit of the first of these periods is accorded to the authors mentioned in Art. 2 (1) and Art. 3 (1) and (5).

Of the second period to translators, compilers of historical or legislative documents, government, *personnes morales*, authors of variations on musical themes.

Of the third period to all other persons.

Art. 10. The duration of protection runs from publication.

Art. 11. In matters relating to posthumous works, not only works published for the first time after the death of the author are to be considered posthumous works, but also works already published which the author may have augmented or corrected, &c. In this case the duration of the privilege runs from the publication of the modified work.

Art. 12. In the case of works published in parts, the duration of privilege runs from the completion of publication.

Art. 13. On the expiration of the period of duration, the work becomes public property.

Abridgments and extracts.

Art. 14. No one may publish abridgments or epitomes of a literary work, alter it, or publish it with commentaries without the author's permission.

The prohibition does not extend to extracts in the form of

(*a*) Compare the Law of Columbia, *ante*, p. 707.

quotations for a critical work, to passages or works of small size, which accompanied by critical remarks are presented as forms for instruction, or to parts of musical works inserted in systems used for teaching music.

Art. 15. When an abridgment or epitome of a didactic or technical work belonging to another has been edited on a more methodical plan, or illustrations have been added to it, the General Council of Public Education may permit the publication of the abridgment or epitome, giving to its author the benefit of a privilege corresponding to that of an original author.

The circumstances of the case are to be considered by three experts, named, one by the original author, one by the author of the abridgment or epitome, and the third by the Council General. If the decision of the experts be favourable to the author of the abridgment, he is bound to deliver to the author of the original work a compensation in specie of which the amount is to be fixed by the Council itself.

Art. 16. The author of an abridgment of a work become public property only possesses a right relating to the abridgment and cannot oppose the author of another abridgment of the same work having a like privilege.

Art. 17. The existence of a privileged translation of a work does not prevent the publication of a new translation of the same work. Translations.

Art. 18. Every translation must indicate the name of the author of the translated work, but this does not prohibit translations of anonymous works.

Art. 19. The assignment of the copyright in a literary work does not confer the right of altering the text in any manner whatsoever except with the author's permission. Assignment.

All additions and alterations which are made ought to be separated from the text in such manner as to be sufficiently distinguishable.

Every violation of this provision gives the author or his heirs a right to demand the restoration of the original text, otherwise all copies of the works are to be confiscated for their benefit.

Art. 20. The Government has the exclusive right of publishing official documents and laws in a special collection. This provision only prohibits private persons from publishing such collections, and does not prevent the reproduction of these documents in other periodical magazines when once they have been published in any periodical official magazine. *Official documents.*

This provision is not opposed to the right of property of

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jurisconsults who publish the laws of the Republic accompanied by doctrinal commentaries and studies.

Legal documents.

Art. 21. Permission of the court having cognizance of a suit is necessary for the publication of documents relating thereto: the court may grant absolute or partial leave, taking into consideration the material interests and the reputation of the persons involved in the suit.

Anonymous works.

Art. 22. When an author has published works anonymously or under a pseudonym, and without recording his true name in the register, the publisher is to be considered the author for the purposes of the privileges attached to that title.

Posthumous works.

Art. 23. The heirs or proprietors of a posthumous work who publish it in a collection with other works of the same author already become public property, lose their right of property in such work: they can only preserve their right while they publish this work separately.

Letters.

Art. 24. Letters belong to the persons to whom they were sent, but only so far as regards the actual property in them. With regard to publication it is different, this right being reserved exclusively to the author, and in cases provided for by law, to the judge. After the death of the author, the right passes to his heirs.

Notwithstanding the provisions in the first paragraph, persons who retain letters which have been sent to them, are able to publish them, when this publication is necessary to protect their personal honour, or to sustain an argument entered upon for the defence of religion, morality, or country.

Works or speeches of officials.

Art. 25. Written or oral works, which have been produced by their authors in the exercise or the accomplishment of their duties or public functions, and which for this reason, have been published officially may be reprinted in periodical magazines; but the right of publishing them in a separate collection is reserved exclusively to the author.

Works executed for pay.

Art. 26. When an author has produced his work for a certain remuneration, copyright in the work belongs to the person or corporation, who has procured it to be made, subject to any agreement to the contrary.

Art. 27. In the case of collaborative works, the agreements between the collaborators are to be adhered to, so far as they are not contrary to this law.

Magazines.

Art. 28. Every work published in a periodical magazine can be reproduced in another, unless the author expressly reserves the right of reproduction, but such work cannot be published in a separate edition.

Art. 29. If the editor or person who brings out a periodical magazine reserves to himself the property in the publications therein inserted, these cannot be reproduced in another magazine.

Otherwise reproduction of such works can be freely made, on condition that the magazine from which they are taken be indicated.

Art. 30. An author who has undertaken the editorship of a periodical publication under an agreement, cannot reserve to himself property in the works which he inserts therein, with a view to prevent their reproduction: this right belongs to the proprietor (of the magazine). Nevertheless, the author preserves property in any separate publication made by him of his articles.

Art. 31. The proprietor of a periodical publication may prevent another periodical being started under the same title.

Art. 32. Portrait-painters and sculptors cannot sell reproductions of portraits or busts made by them, without the permission of the interested person. Portraits and busts.

Art. 33. Dramatic works are protected against reproduction in the same manner as other works of literature. Dramatic works.

Art. 34. They cannot be represented in public theatres without the author's permission. The latter is free to fix, at the time of giving permission, such royalties as he thinks fit.

Art. 35. The rights above mentioned, conferred upon a dramatic author in respect of the representation of his works, are secured to him for his life. The rights endure for twenty-five years after his death for the benefit of his heirs, if there be not other assigns. Duration.

Art. 36. The extent of the respective rights of the authors of a dramatico-musical work are to be determined by the agreement between them.

Art. 37. Although the author of musical transpositions made without the permission of the author of the original work is not admitted to enjoy the privileges recognised by the law, he is however to have the right of preventing the performance of his transpositions, when no remuneration is given to him.

Art. 38. Literary and artistic property may be transferred by any title whatsoever. Assignment.

Art. 39. The persons who are heirs according to the ordinary law are to be considered heirs from the point of view of this law.

Art. 40. Grounds of disability fixed by the civil law in

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respect of succession to ordinary property also hold good so far as they are applicable, in matters of literary and artistic property.

Art. 41. An author may abandon his rights to the public by express declaration.

Art. 42. When an author has granted to a citizen of Ecuador the exclusive right of translating or making an abridgement or epitome of his works, such person may prevent any work analogous to his own being made in Ecuador.

The same provision applies in like cases in regard to artistic property and the representation of dramatic works permitted by a foreign author to an Ecuadorian theatrical enterprise.

Registration.

Art. 43. In order to enjoy the right of property in this matter, the author or person who procures a work to be made must register the title of his work, and the reservation of his rights.

Art. 44. A special register for entering literary and artistic property and another for agreements relating thereto is to be opened in the cantonal registration offices.

Art. 45. The officer charged with the duty of registration, must demand before proceeding to registration that the author shall deliver to him three copies of his work if printed: one for the Ministry of Public Education, another for the National Library, and the third for the Provincial Library, or if none, for the local municipality: the receiver must inscribe on each of them a statement of registration and must mark them with the office stamp.

In the case of a periodical, it will be sufficient to register the first number, but subject to the continuing obligation on the author or proprietor to deposit three copies of the subsequent numbers for the destinations aforesaid.

Art. 46. In the case of an artist, or sculptor, it will be sufficient to preserve the right of copying or reproduction, if this reservation be entered on the register.

Nevertheless engravers, lithographers, and other artists, who are proprietors of works of which copies can be multiplied by a mechanical process, must in addition to registration deposit three copies of their works above-mentioned.

Art. 47. In the case of dramatic works, and musical works joined with them, which are presented for registration while not yet printed, it is sufficient to deposit a MS. copy.

Art. 48. Every agreement relating to artistic or literary

property must be entered on the register in order to be effective.

Art. 49. The period allowed for registration is six months to be reckoned from publication, or in the case of the works mentioned in Art. 47, three months from the date of representation.

Art. 50. The formalities relating to the registration and transfer of literary and artistic property do not require a fee.

Art. 51. A special section has to be opened in the register for the registration of anonymous and pseudonymous works, in which the identity of the author must be stated.

The officer charged with registration is bound to secrecy in this respect, and in the reports given by him to the Minister of Public Education, he must only enter the fact of registration. But he is relieved from this obligation on the requisition of a judge in criminal proceedings relating to a work, or when the production of the entry on the register may be necessary to support rights conferred by this law.

Art. 52. The ordinary judges have jurisdiction in litigation relating to literary and artistic property. Jurisdiction.

Art. 53. The following are considered fraudulent acts: Piracies and remedies therefor.

(1) Registering as a man's own the work of another.
(2) Publishing a work under similar circumstances.
(3) Publication of a work made before the expiration of the legal duration of a privilege or agreement.
(4) The fact of omitting in a reproduced work, a reference to the agreement between the author or publisher, or the permission relating to the reproduction.
(5) Plagiarism.
(6) Piracy of an edition, outside the territory of the Republic.
(7) The introduction and sale of pirated copies.
(8) The dramatic representation and musical performance of a work without the author's permission.
(9) The reproduction and putting on sale of editions made in fraud of authors who live under the jurisdiction of a State with which Ecuador is bound by treaty on this subject.
(10) The fact of a printer, publisher, lithographer, &c., reserving to himself a larger number of copies than that agreed on.

Art. 54. In every case where a fraudulent act has been committed the author, or proprietors interested, have the right of seizing all copies of the work of a fraudulent

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character, and of claiming restitution of the value of copies sold, without prejudice to the compensation they may obtain for the damage caused to them.

Art. 55. If plagiarism be only partial, the author has only the right of claiming from justice an insertion in the official journal of a notice mentioning the proceedings taken by him in the matter.

Art. 56. An action for plagiarism can only be instituted in respect of published works.

Art. 57. Legal proceedings in relation to fraudulent acts can only be instituted against the author of the acts. If proceedings cannot be taken against him, proceedings may be taken successively and in the following order against the publisher, printer, importer, vendor, and possessor.

The judge must at the request of the person interested, and for the duration of the proceedings, order sequestration of all copies of the work existing in the Republic.

Art. 58. If there be aggravating circumstances, the offenders, in addition to the penalty of confiscation, is liable to a fine graduated by the judge, and varying from 50 to 500 sucres (*a*).

Art. 59. On a second offence the fine will be doubled.

Art. 60. The following are to be considered aggravating circumstances:

(1) The putting on the market editions whose fraudulent character has been the subject of a notice by the author to the public.

(2) Any marked alteration of the text.

(3) The fact of publication of the work outside Ecuador.

(4) The fact of pirating the title and frontispiece of a work.

Art. 61. The penalties prescribed by this law against alteration of the text are to be applied, without prejudice, to the penal proceedings which may be taken according to circumstances.

Art. 62. The right of instituting proceedings in relation to artistic and literary property belongs, according to the circumstances, to the author, his heirs, or assigns.

Art. 63. Whenever it is a question of deciding if two works be identical or if one be taken from another, and the judge thinks it useful, the question may be submitted by him for a previous examination by three experts, two to be named by the parties and one by the judge.

(*a*) = 5 francs nominally.

Art. 64. Every citizen of Ecuador who publishes a work outside the territory is also to enjoy the rights recognized by this law, on condition of fulfilling the legal formalities.

In such case, the period for registration is double.

General provisions.

Art. 65. The period fixed for registration of the rights recognized by this law, and in order to obtain their benefit, is in regard to works previously published by Ecuadorian authors to commence to run from the coming into force of this law.

Art. 66. The executive authorities may publish a regulation for carrying out this law.

Rights of Foreigners.

Foreigners.

The above law does not expressly refer to foreigners, and perhaps "authors" will be restricted to native authors, but, at any rate, Art. 42 would seem to be applicable to foreign authors, and enable them to grant to an Ecuadorian citizen the exclusive right in Ecuador of translating, abridging, epitomising, or performing their works. Under Art. 64, citizens of Ecuador can obtain copyright in that country, though publishing abroad. Ecuador has two copyright treaties in force, viz., with Mexico (10th July, 1888) and with France (9th May, 1898). She has signed, but not ratified, the Pan-American Convention.

GUATEMALA.

The following law was passed on the 29th October, 1879 (*a*):

Definition. To what copyright extends.

Art. 1. The inhabitants of the Republic have the exclusive right of publishing and reproducing, as often as they think fit, in whole or in part, their original works, whether by manuscript copies or transcripts, or by printing, lithography, or any analogous process.

Art. 2. The right recognized by the preceding article extends to oral or written lectures and to every speech of whatever nature, delivered in public.

Art. 3. Reports placed before, and speeches delivered in political assemblies, scientific or literary articles, and original poems inserted in periodical publications, are included in the works mentioned in Art. 1, so far as the right of forming collections of them is concerned.

(*a*) Translation taken from 'Lois françaises et étrangères,' par M. Lyon-Caen. The law is very similar to that of Mexico; see *post*.

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Art. 4. Private letters cannot be published without the consent of the two persons between whom they have been exchanged, or their heirs, unless this publication be necessary to establish or maintain some right, or the public welfare, or the progress of science requires it.

Duration.

Art. 5. Literary copyright is perpetual. After the death of an author it passes to his heirs according to law.

Rights of assignee.

Art. 6. The author and his heirs can alienate their property like any other property, and the assignee acquires all the author's rights, according to the terms of the contract.

Art. 7. If the author, after an assignment of one of his works, subsequently makes essential modifications in the work, the assignee cannot oppose the author or his heirs publishing or alienating the corrected work.

Art. 8. The judge must give his decision in the case mentioned in the preceding article, after a report from experts; he may, in addition, take the advice of such learned societies as he thinks fit to consult.

Posthumous works.

Art. 9. The heirs and assigns have the same rights as an author, in relation to posthumous works.

Anonymous works.

Art. 10. Anonymous or pseudonymous works are comprised in the works to which the provisions of this law apply, from the time when the author, his heirs or representatives, establish their right of property.

Institutions.

Art. 11. Academies and other scientific and literary institutions have property in the works published by them.

Collaborative works.

Art. 12. In the case of the publication of a dictionary, an encyclopædia, or any other work composed by several persons, whose names are known, if it be impossible to determine the part of which each is the author, the property shall belong to all. If such persons cannot agree about the use of them, the decision of the majority will be binding: if a majority be not constituted, the judge is to decide.

Art. 13. In the case provided for by the last article, if one of the authors dies without leaving heirs or assigns, his right accrues to his collaborators.

Art. 14. Where, in the case of such a work, the authors of determined parts are known, or it can be proved who they are, each of them shall enjoy the property in the part of which he is author, in conformity with the principles of law; but the complete work cannot be again published without the agreement of the majority.

Art. 15. If a work composed by different collaborators has been published by a single person, he is to have the entire

property, subject to the right of each author to republish his own composition, either separately or in a collection.

Art. 16. In such case the publisher cannot publish the said compositions separately without the consent of their authors.

Periodicals.

Art. 17. With regard to political periodicals, the only property recognized is that in scientific, literary, or artistic articles contained in them, whether these articles are original works or translations; but any person publishing any passage from the unprotected part must cite the title and number of the periodical from which the quotation is taken.

Translations.

Art. 18. Every author may reserve the power of publishing translations of his works; but in such case, he must declare whether his reservation is limited to particular languages or is extended to all.

Art. 19. If an author does not make this reservation, or has assigned the right of translation, the translator is to enjoy, in regard to his translation, the author's rights; but he cannot prevent the work being translated by others unless the author has also given to him the right of preventing any other translation.

Annotations, abridgments, &c.

Art. 20. No one may reproduce the work of another, under the pretext of annotating it, commenting on it, completing it, or making an improved edition, without the leave of the author; but any person annotating or making additions to the work of another, can publish his annotations and additions separately, in which case he will be considered as the proprietor of them.

Art. 21. The permission of the author is also necessary for the publication of an abridgment or epitome. Nevertheless, if an epitome or abridgment is of such value or importance that it constitutes a new work or is of general utility, the government may authorize its printing, after a previous hearing of the interested parties and two experts to be named by each.

In such cases, the author or proprietor of the original work has a right to demand that his name be preserved on the abridgment, and he may claim compensation, which is to be fixed after hearing the same interested parties and experts.

Publishers.

Art. 22. A publisher who is neither the heir nor the assign of the proprietor of a work or translation, is only to have the rights given to him by the agreement made with him.

Art. 23. The publisher of a work previously become public property is only to have a right of property during the time required for publication and a year afterwards, and this right does not enable him to prevent other editions being made outside the territory of the Republic.

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Art. 24. A work is to be considered as public property when its author or proprietor dies without leaving successors.

Cessor of copyright.

Art. 25. The publisher of an anonymous or pseudonymous work has the same rights as the author, subject to the provisions of Art. 10.

In the case contemplated by that article, the proprietor is to recover all his rights, and the publisher must place at his disposal the copies in existence, or their value, but if the publisher be proved to have acted not *bonâ fide*, proceedings may be taken against him according to the penal law.

Art. 26. The nation is the proprietor of MSS. preserved in the Public Archives, and consequently these MSS. cannot be published without the permission of the government.

Art. 27. The nation is also proprietor of works published by Government, subject to any agreements made with the authors or publishers.

Registration.

Art. 28. To secure copyright, the author or his representative must apply to the Ministry of Public Education, for the purpose of obtaining legal recognition of the right.

Deposit.

Art. 29. The author of every printed book must deposit four copies, of which one is to be placed in the National Library, another in the Public Archives, and the others at the Ministry of Public Education.

A similar deposit must be made for each edition or new translation.

Art. 30. The said Ministry must give the person interested a certified copy of the order recognizing in his favour the property in the work, which copy will be a sufficient title.

Art. 31. When a work is published without the author's name, he must append to the copies mentioned in Art. 29, if he wishes to enjoy copyright, a sealed envelope containing his name, and marked by him in such manner as he thinks fit.

Art. 32. Every author, translator, or publisher must insert on the title-page of published books his name, the date of publication, and such conditions or legal information as he thinks necessary.

Subject to the exception provided for by the preceding article, a person neglecting to fulfil the formalities of this article cannot exercise his rights of property.

Penalties.

Art. 33. Any person reproducing the work of another without the consent of the author or his representatives, will incur the following penalties:

(1) Confiscation of all copies of pirated works found in his

possession: these to be delivered to the author or his representatives.

(2) To pay compensation for the damage and injury suffered by the proprietor. The compensation to be fixed by the judge after hearing the parties and obtaining a report by experts.

(3) To pay the expenses of the proceedings (*procédure*) and the personal expenses of the suit (*frais personnels de l'instance*).

If the offence be repeated, in addition to these penalties, a fine from 100 pesos to 1500.

In the case of a fresh repetition, in addition, *arrêt majeur* (*a*), graduated according to circumstances.

Injunction.

Art. 34. When the author or proprietor of a work learns that it is on the point of being secretly printed or circulated, he may demand from the judge of first instance of the department where the piracy is committed, that the printing or vending of the work be at once prohibited, and the judge will be bound to do justice to this demand according to the law.

Rights of Foreigners.

Foreigners.

The above law only confers copyright on "inhabitants of the Republic." (Art. 1.) Guatemala has copyright treaties with Costa Rica (15th May, 1895), France (21st August, 1895), Honduras (2nd March, 1895), Salvador (27th March, 1895), and Spain (25th May, 1893) (*b*). She has also signed and ratified (24th April, 1902) the Pan-American Convention.

HAITI.

Law of 8th October, 1885.

By the law of literary and artistic property passed on the 8th October, 1885, after a preamble stating that the law on this subject, already sanctioned in the Penal Code and the law of the 25th October, 1864, required modification and extension, it was enacted as follows (*c*):

Definition.

Art. 1. The expression "literary and artistic works" includes books, pamphlets, writings of every kind, dramatic works of every kind, musical compositions with or without words and

(*a*) *Arrêt majeur.* From four months' to a year's imprisonment. 'Lois françaises et étrangères,' par M. Lyon-Caen.

(*b*) The text of these treaties may be found, translated into French, in the Collection of Treaties published by the Official Copyright Bureau at Berne in 1904.

(*c*) 'Lois françaises et étrangères,' par M. Lyon-Caen, from which work the present translation has been made.

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arrangements of music, works of drawing, painting, sculpture, and engraving, lithographs, geographical charts, plans, scientific sketches, and generally every kind of literary, scientific, or artistic work capable of being published by any method of printing or reproduction.

Deposit.

Art. 2. Authors of these works shall enjoy the right of property hereinafter mentioned, and the privilege of proceeding against pirates or vendors of their works, on the sole condition of depositing at the secretary's office of the Department of the Interior five copies, to be sent on to the different public libraries by the chief of the said department.

Art. 3. This deposit shall be made:

(1) In the case of a work published by a Haitian in Haiti or a foreign country, in the year of publication.

(2) In the case of a work so published before the promulgation of this law, within a period of two years.

Posthumous works.

Art. 4. The proprietors of posthumous works, by inheritance or other titles, are in the position of authors, and shall enjoy the same rights and the same privileges, subject to the condition of printing their works separately and observing the provisions of this law.

Duration.

Art. 5. Authors shall have the exclusive right during their life of selling, causing to be sold, circulating, representing, translating or causing to be translated into another language, all their works whatsoever, of assigning the property in whole or part, and making use of the appropriate processes of reproduction of every class of work.

Widows and children, and other heirs.

Art. 6. The same privilege, which extends to widows for their life, shall pass to children for twenty years, and if there be no children, for ten years to the other heirs or proprietors, after which the work shall become public property.

Piracy.

Art. 7. Any person publishing, reproducing, exhibiting or representing, without the written consent of the author or his representatives, a literary or artistic work, of which he is not proprietor, commits the offence of piracy, and shall be punishable according to the Penal Code and these provisions.

Art. 8. The authority having jurisdiction is bound to confiscate, on the first demand of authors, their heirs, or the other proprietors, and for their benefit, all copies or reproductions of any work printed or engraved, painted, or drawn by any process, or sculptured, without the consent mentioned in the preceding article.

Art. 9. The pirate shall further be condemned by the court having jurisdiction, at the request, and for the benefit of the

proprietor, in a sum equivalent to the price of 1000 copies of the original publication.

Art. 10. The vendor of pirated publications, if he be not found to be the pirate, shall be condemned, also for the benefit of the proprietors, in a sum equivalent to the price of 200 copies of the original.

Art. 11. This law repeals all contrary laws and provisions, and shall be carried into effect by the secretaries of the Departments of the Interior and Justice.

By the Penal Code of 1835, it is provided as follows: Penal Code.

Art. 347. Every publication of writings, of a musical composition, a drawing, a lithograph, a painting, or any other production, printed or engraved, in whole or in part, in violation of the laws and rules relating to copyright is a piracy, and every piracy is a misdemeanour.

Art. 348. The sale of pirated works, the importation into Haitian territory of works which, after having been printed in Haiti, have been pirated in a foreign country, are an offence of the same kind.

Art. 349. The penalty against the pirate or importer will be a fine of 100 gourdes (*a*) to 1000 gourdes: against a vendor, 16 to 80 gourdes.

Confiscation of the pirated publication will be decreed against the pirate, importer, or vendor.

Plates, moulds, and matrices of pirated articles will be also confiscated.

Art. 350. Every director or theatre manager, every society of artistes representing in a theatre dramatic works in violation of the laws and regulations respecting copyright, shall be punishable with a fine of 24 to 80 gourdes and confiscation of the receipts.

Art. 351. In the cases provided for by the four preceding articles, the products of the confiscations or the confiscated receipts shall be handed over to the proprietor in compensation so far of the injury suffered by him: the remaining compensation, or the entire compensation, if there has been neither a sale of confiscated objects nor a seizure of receipts, will be regulated in the ordinary way.

Rights of Foreigners.

The above law has no special provisions as to foreigners. Foreigners. Haiti was one of the original signatories of the Berne Convention

(*a*) Gourde = a peso or 5-franc piece. Whitaker.

in 1886, and she has also ratified the Additional Act of Paris, 1896, and the "Interpretative Clause." She has signed, but not yet ratified, the Pan-American Convention.

HONDURAS.

No special copyright law.

Honduras has no special law relating to copyright beyond some rudimentary provisions in the Penal Code of 29th July, 1898, and the Civil Code of 31st December, 1898. By Art. 523 of the former it is provided that any fraud in the matter of literary or industrial property shall be punishable with "minor banishment" for a period of from thirty-one days to a year. Art. 444 of the Civil Code declares that "the author of a literary, scientific, or artistic work has the right to exploit it or dispose of it as he pleases," and Art. 445 enacts that "the laws relating to intellectual and industrial property shall designate the persons to whom this right shall belong, the modes of exercising it, and its duration. Where no such provisions are made, the general rules established by this Code with regard to property shall apply."

Honduras has copyright treaties with Costa Rica (28th September, 1895), Guatemala (2nd March, 1895), Nicaragua (20th October, 1894), and Salvador (19th January, 1895) (*a*), and has signed, but not yet ratified, the Pan-American Convention.

MEXICO.

The Civil Code of 1871 contains full provisions on literary and artistic property (*b*).

Title 8.—*Labour.*

Art. 1245, following Art. 4 of the Constitution of the 12th February, 1857, provides that every one shall be at liberty to follow the profession, trade, or employment which suits him, provided it is useful and honest, and to appropriate its produce. This double power can only be withdrawn by a judicial sentence, or

(*a*) These treaties will be found, translated into French, in the Collection of Treaties recently published by the International Bureau at Berne.

(*b*) This Code was replaced by a new Code in 1884. We have not been able to obtain this latter Code, but the alterations made by it in the law of copyright are of a minor character, and the law given in the text may be safely taken as giving substantially the Mexican law of copyright at the present day. See 'Le Droit d'Auteur,' 1896, p. 82. Some of the alterations are referred to in the notes.

a decree of government made in conformity with law, when the rights of others or of society have been violated.

Art. 1246. Property in the productions of labour and industry shall be ruled by the same laws as ordinary property except in the cases for which this code contains special provisions.

Literary property.

Art. 1247. Inhabitants of the Mexican Republic shall have the exclusive right of publishing and reproducing as often as seems good to them, in whole or in part, their original works, either by manuscript, printing, lithography, or other analogous process.

Art. 1248. With regard to publication, the provisions of the law regulating the liberty of the press shall be observed.

Art. 1249. The right recognised by Art 1247 shall apply to oral and written lectures and all other speeches delivered in public.

Art. 1250. Pleadings, and speeches delivered in political assemblies, do not constitute literary property except in the case when it is intended to form a collection of them.

Art. 1251. The provisions of this chapter apply to MSS.

Art. 1252. Private letters cannot be published without the consent of the two correspondents or their heirs, except where publication becomes necessary for proof or defence of a right, in the public interest, or to aid the progress of science.

Perpetual duration.

Art. 1253. An author shall enjoy literary copyright during his life: after his death it shall pass to his heirs, according to the law.

Power of alienation.

Art. 1254. An author and his heirs can alienate literary like any other property, and the assignee shall succeed to all the author's rights, according to the terms of the contract.

Arts. 1255 and 1256. If the assignment be made for a shorter period than that fixed in certain cases for the duration of copyright, the assignor shall recover all his rights at the expiration of the period agreed upon: if for a longer period, the assignment will be void as to the excess.

Posthumous works.

Art. 1257. In respect to posthumous works, the heir or assign shall have the same rights as the author.

Art. 1258. The publisher of a posthumous work by a known author, if he be not the heir or assign of the author, shall have copyright for thirty years.

Anonymous works.

Art. 1259. Anonymous and pseudonymous works shall be subject to the provisions prescribed by this chapter, provided that the author, his heirs, or representatives legally prove their title to the copyright.

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Modification by author after assignment.

Arts. 1260 and 1261. If an author after having assigned his copyright in a work, make substantial changes therein, the assignee cannot prevent the author or his heirs from publishing and assigning the work thus altered.

For the purpose of deciding such a case, the judge shall take the opinion of two experts to be respectively named by each party. He may in addition consult such persons or bodies as shall seem good to him.

Works published by academies.

Art. 1262. Academies and other literary or scientific institutions shall enjoy copyright in works published by them during twenty-five years.

Collaborative works.

Art. 1263. When several authors have compiled in common an encyclopædia, a dictionary, a newspaper or other work and their names are known, but it is impossible to distinguish the share of each in the composition, the copyright shall belong jointly to them all, and Arts. 1367 and 1368 shall regulate the exercise and division of the property between the different persons entitled.

Art. 1264. In such case, if one of the authors shall die without leaving heirs or assigns, his right shall accrue to his collaborators.

Art. 1265. If the authors of such a work are known, and it is possible to distinguish who is the author of each article, each one of the collaborators shall enjoy his own copyright according to law, but the publication of the entire work can only be made with the consent of the majority.

Art. 1266. If a work composed by several authors has been the enterprise of or published by a single person or a corporation, such individual or corporation shall have the property of the entire work, reserving the right of each author to republish his articles either separately or together.

Art. 1267. In the case referred to in the last article, the publisher cannot publish the articles separately without the consent of their authors.

Newspapers.

Art. 1268. In political newspapers, only scientific literature or artistic articles, whether original or translated, shall be subjects of copyright. Nevertheless, any person who publishes an extract from the parts of the paper not capable of being the subject of copyright, must indicate the title and number of the paper borrowed from.

Translation.

Art. 1269. An author may reserve the right of translation, but he must state whether he does so for a special language or for all.

Art. 1270. If an author has not reserved this right or has

assigned it to another, the translator shall have in his translation the same rights as an author, but shall not be able to prevent others making another translation, unless the author has also assigned this right to him (*a*).

Art. 1272. If a translator take proceedings against a new translation asserting that it reproduces the first, and does not constitute a new work from the original, the judge shall act according to the provisions of Art. 1261 before giving his decision.

Annotations.

Art. 1273. No one may under pretext of annotating, commenting on, adding to or improving the edition, reproduce the work of another without his leave. Any person, however, who has made additions or annotations to the work of another, may publish them separately; in which case his additions or annotations shall constitute a literary property for his benefit.

Abridgments.

Art. 1274. Permission is also required for the making of abridgments or epitomes of a work. Nevertheless, if an epitome or an abridgment has such merit or such importance that it constitutes by itself a new work, or is of extreme utility to the public, the government, after a hearing of the parties interested, and two experts named respectively by each party, may permit its publication.

Art. 1275. In such case the authors of the original work shall be entitled to a compensation at the rate of 15 to 30 per cent. on the net produce of every edition published of the abridgment.

Publishers' rights.

Art. 1276. If the publisher is neither heir nor assign of the owner of copyright in a work or a translation, he shall have no other rights than those given to him by any agreement which may have been made.

Art. 1277. The publishers of a work become public property shall only have the exclusive right during the time necessary for publication, and one year in addition. This right does not imply a power of stopping editions made out of Mexican territory.

Art. 1278. The publisher of an anonymous or pseudonymous work shall enjoy copyright, subject to the provisions of Art. 1259.

Art. 1279. In the case provided for by that article, the proprietor shall recover all his rights, and the publisher shall put at his disposal the existing copies or their value. If the publisher be proved to have acted in bad faith, proceedings may be taken against him according to law.

(*a*) Art. 1271 relates to foreign works. See Rights of Foreigners, *post*.

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Art. 1280. Any person who publishes for the first time a MS. of which he is lawfully possessed, shall have the right of publication during his life.

Laws.

Art. 1281. Any one may publish laws, other decrees of government, and judicial decisions, but after the official publication has taken place, the publisher must adhere to the authorized text. Nevertheless, no one may publish a collection of the federal laws or the laws of a particular state of the Mexican Republic without having previously obtained the consent of the central government or the particular state.

Art. 1282. In the exceptional cases when literary copyright is temporary, the period of duration shall run from the date of the work. If this be unknown, from the 1st January of the year following that in which the work, or the last volume, part, or number appeared.

Dramatic works (*a*).

Art. 1283. Dramatic authors, besides the exclusive right of publication and reproduction, shall have also an exclusive right of representation.

Duration.

Art. 1284. A dramatic author shall enjoy the exclusive right of representation during his life: at his death, this right shall pass to his heirs, who shall enjoy it for thirty years.

Art. 1285. Assignees of the right of representation shall only enjoy it for the life of the author and thirty years after his death.

Art. 1286. At the expiration of the periods established by the preceding articles, the works shall, so far as regards the right of representation, become public property.

Art. 1287. The creditors of the theatrical management cannot seize the part of the receipts belonging to the dramatic author.

Authors and managers.

Art. 1288. An author may in the agreement between him and a manager for the representation of his piece, limit the number of representations, and insert such conditions as may seem good to him; he may stipulate, accordingly, that it shall only be played during a certain time, in a certain town, or in a certain theatre.

Art. 1289. An author may make such alterations and corrections in his piece as he thinks proper, but must not alter any essential part without the approval of the management.

Art. 1290. The management shall not under any pretext whatever communicate the piece while in manuscript to any person outside the theatre, without the express permission of the author.

(*a*) A number of these provisions resemble very closely the law of Portugal.

Art. 1291. The author of a dramatic work which has been accepted may not assign the right of representation to another theatrical management except under provisions in his agreement, nor may he publish or put on the stage an imitation of his piece.

Art. 1292. When the work is not represented at the time and according to the conditions agreed on, the author may freely withdraw it.

Art. 1293. When the agreement does not determine the time of representation, the piece may be withdrawn by the author if a year have elapsed since the day of acceptance, without the piece having been played.

Art. 1294. The same right belongs to the author of a piece which has not been played for five years without good cause.

Art. 1295. In the cases contemplated in the three last articles, the author is not bound to return the money he has received.

Posthumous dramatic works.

Art. 1296. Posthumous dramatic works cannot be represented without the permission of the heirs or assigns in the enjoyment of the rights given by Arts. 1284 and 1285.

Art. 1297. The publisher of a posthumous theatrical piece, who happens to be in the position contemplated by Art. 1258, shall only have the dramatic property for twenty years.

Art. 1298. The publisher of an anonymous or pseudonymous theatrical piece shall have the dramatic property during thirty years. But if the author, his heirs, or assigns legally establish their rights, they shall recover the property, and accordingly all intervening agreements made as to the representation of the piece, shall come to an end.

Collaborations.

Art. 1299. When a theatrical piece has been composed by several authors, each one of them has the right of authorizing the representation, unless there is a contrary agreement, or some good reason is alleged: this shall be subject to the consideration of the administrative authority, after a previous reference to experts.

Art. 1300. In the case referred to in the last article, the heirs and assigns shall have the same right. But if one collaborator leave several heirs or assigns, their opinions taken in the manner prescribed in Art. 1367, shall only count as one vote and shall only represent that of the author whom they have succeeded.

Art. 1301. In the same case, if one of the authors of the piece should die without leaving any heirs or assigns, the property

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shall accrue to the others; but the portions of the receipts which would have been allotted to the deceased shall be devoted to the encouragement of theatres.

Assignment.

Art. 1302. The assignment of the right of publication of a dramatic work does not carry with it the right of representation, unless expressly agreed.

Art. 1303. All the provisions relative to authors shall apply to translators.

Art. 1304. Where dramatic property has a fixed duration, the period shall run from the first representation.

Art. 1305. All the provisions contained in Arts. 1254–1257 and 1269–1272, respecting the right of publication, apply also to the right of representation.

Artistic property. Definition of author.

Art. 1306. The following persons shall have the exclusive right of reproduction of their original works: authors of geographical and topographical charts, of scientific and architectural, &c., drawings, and the authors of plans, prints, and drawings of every kind; (2) architects; (3) artists, engravers, lithographers, and photographers; (4) sculptors for such of their works as are completely finished as well as for their designs and casts; (5) musicians; (6) calligraphists.

Art. 1307. Artistic copyright is governed so far as the right of reproduction of the original work is concerned, by Arts. 1251–1253, 1266, 1273–1279, and 1282, in the cases referred to in such articles respectively, so far as such articles are applicable to works of art.

Musical composition.

Art. 1308. The right of performance of musical compositions is regulated by Arts. 1283–1302, and Art. 1304.

Art. 1309. For legal purposes the author of the music is considered as being also the author of the words, reserving to the author of the words a right to protect himself by written agreement.

Art. 1310. Musical copyright shall give the author the exclusive right of making agreements as to arrangements to be composed on the *motifs* or themes of the original work.

Art. 1311. The owners of artistic copyright may reproduce or authorize reproduction to the exclusion of all others, either in whole or in part, of the works the subject of the copyright, and that either by the same or a different process, in different or the same proportions.

Art. 1312. The author of a lawful reproduction shall have the rights of the artist himself in such manner as is fixed by agreement.

Rights of

Art. 1313. The purchaser of a work of art is not presumed

to have acquired at the same time the right of reproduction where it has not been expressly so agreed.

purchaser of a work of art.

Art. 1314. An artist who executes a work to order loses the right of reproducing it in the same branch of art.

Art. 1315. The possessor of a sculptural design shall be presumed to have the right of reproduction, unless there be an agreement to the contrary.

Piracy. Definition.

Art. 1316. The following acts, in the absence of the lawful owner's permission, constitute piracy.

(1) Publication of works, speeches, lectures, and original articles referred to under the heading Literary Property.
(2) Publication of translations of such works.
(3) Representation of dramatic works and performance of musical compositions.
(4) The publication and reproduction of artistic works whether effected by the same process as that employed by the artist or by a different process.
(5) The omission of the name of the author or translator.
(6) Change of the title of a work, suppression or modification of any part.
(7) Publication of a larger number of copies than agreed upon in conformity with Art. 1363.
(8) The reproduction of an architectural work, when to effect this it is necessary to penetrate into a private house.
(9) The publication and performance of a musical piece composed of extracts from other pieces.
(10) The arrangement of a musical composition for separate instruments.

Art. 1317. Also, the reproduction or representation of a work when done in violation of the conditions or after the time fixed in certain cases by the preceding articles.

Art. 1318. Also, the announcement of a performance of a dramatic work or musical composition, even though the piece should not be represented, and whether the announcement did or did not contain the name of the author or translator, in every case where the author has not given his consent.

Art. 1319. Also, the sale of pirated works either in the Mexican Republic or elsewhere.

Art. 1320. Also, the publication of a work in contravention of the provisions contained in the press law.

Art. 1321. Also, every publication or reproduction not expressly provided for by the following article:

Art. 1322. The following acts do not constitute piracy:

(1) The literal quotation or insertion of a selection or passage taken from a published work.

(2) The reproduction of or an extract from articles in a review, a dictionary, a newspaper, or a composition of a similar kind, provided that the writing from which the extract has been borrowed be indicated, or that the reproduction be not, in the opinion of experts, made to an undue extent.

(3) The reproduction of a poem, a memoir, a speech, &c., in a critical or historical work of literature, a paper, or in a book intended for the use of an educational establishment.

(4) The publication of chosen selections from different works.

(5) The separate publication of additions or corrections made to or in a work.

(6) The publication of the works of an author dying without heirs or assigns or who has neglected the legal formalities prescribed for the preservation of copyright.

(7) The publication of anonymous or pseudonymous works, but subject to the restrictions expressed in Arts. 1259 and 1279.

(8) The representation of a drama, or the performance of a musical work, in whole or in part, when it takes place without stage accessories in a private house or at a public gratuitous concert.

(9) The representation or performance of a dramatic or musical work of which the receipts are intended for charity.

(10) The publication of the libretto of an opera, or the words of any musical composition where the author has not expressly reserved his literary copyright.

(11) The translation of a published work, subject to the provisions of Arts. 1269 and 1272.

(12) The reproduction of a sculpture, if there be such essential differences between it and the original work that, in the opinion of experts, the former ought to be considered a new work.

(13) The reproduction of works of sculpture standing in squares, promenades, cemeteries, and other public places.

(14) The reproduction of works of painting, engraving, or

lithography, by processes of the plastic arts and *vice versâ*.

(15) The reproduction of a sculptural design already sold when the reproduction is essentially different.

(16) The reproduction of works of architecture, in the case of public monuments or the exterior parts of private houses.

(17) The use of artistic works as designs for manufacturing productions.

Art. 1323. Any person contravening the provisions of Arts. 1316–1321, shall forfeit for the benefit of the proprietor all pirated copies in existence, and shall pay the price of any missing copies required to complete the edition. Penalties.

Art. 1324. If the proprietor does not desire to recover the copies, the pirate shall pay to him the value of the whole edition.

Art. 1325. The price per copy to be paid by the pirate shall be the actual price of copies of the legal edition; and if that be exhausted the price of copies at the commencement of publication of the work shall be looked to.

Art. 1326. If the legal edition of the work be published by subscription, the price payable by the pirate shall be, not that of the subscription, but the actual price in the book market at the date of the publication.

Art. 1327. If the edition be the first published, the pirate shall pay the market price of copies, the right being reserved to the proprietor of complaining against the smallness of this.

Art. 1328. If the piracy has been executed otherwise than by mechanical processes, the price shall be fixed by experts.

Art. 1329. Where the number of copies forming a fraudulent edition is unknown, the pirate shall not only forfeit the copies seized, but shall pay in addition the value of 1000 copies, a right being reserved to the proprietor to prove that this amount is less than the damage he has suffered.

Art. 1330. Plates, moulds, and matrices used in manufacturing the fraudulent edition shall be destroyed: this does not apply to type.

Art. 1331. The provisions of Arts. 1323 to 1327 shall apply also in case the pirated edition has been manufactured outside the Mexican Republic.

Art. 1332. Any person representing a theatrical piece or performing a musical composition in violation of Art. 1316 (3) Piracy of musical and

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and (9) and Arts. 1317–18, shall pay to the proprietor the gross receipts of the unlawful representation or performance.

dramatic pieces.

Art. 1333. If the representation or performance include different pieces or compositions, the receipts shall be divided into shares proportional to the number of acts or *morceaux*, and if the calculation cannot be made in that way, it shall be made by experts.

Art. 1334. The proprietor shall have the right of seizing the receipts before, during, and after the representation.

Art. 1335. The value represented by season tickets shall be brought into the account of the receipts.

Art. 1336. Copies distributed to actors, singers, and musicians, and also librettos and scores, shall be destroyed.

Art. 1337. The proprietor shall have a right to stop the performance, in which case the last article shall apply, and the proprietor shall be allotted a compensation to be fixed by experts.

Art. 1338. In addition to the proprietor's right to the receipts, he shall receive compensation for the damage caused to him. This shall be fixed by the judge, on the advice of experts.

Art. 1339. For the purposes of the law any person who, on his own behalf, undertakes or executes a piracy shall be civilly responsible.

Art. 1340. If the infringement has been produced out of the Republic, the person selling will be responsible.

Art. 1341. Actors and artistes who take part in a piracy on another's account are not civilly responsible.

Art. 1342. No person other than the proprietor can put in force the rights mentioned in this part of this law.

Art. 1343. The judge shall take the advice of experts in all doubtful cases.

Art. 1344. In copyright actions, the judge who shall have jurisdiction is the judge where the proprietor resides.

Art. 1345. The administrative authority of a State shall have power to stop the performance of a dramatic work, sequestrate the receipts, seize pirated works, and generally to take any measure of urgency.

Art. 1346. Judgments given in cases of literary, dramatic, or artistic property, shall be appealable or not, according to the amount in litigation; but no appeal shall lie from orders of urgency made in conformity with the last article.

Art. 1347. If proceedings be once commenced in vindication of copyright, the subsequent abandonment of them by

the proprietor will not discharge the pirate from civil responsibility.

Art. 1348. Independently of the above-mentioned penalties, the pirate shall be liable to the penalties prescribed by the Penal Code for the offence of fraud.

Registration.

Art. 1349. In order to obtain copyright, the author or his attorney must present himself at the Ministry of Public Education, to procure legal recognition of his rights.

Deposit.

Art. 1350. The author of a book shall deposit two copies (*a*).

Art. 1351. Every author of a musical work, an engraving, a lithograph, or an analogous work, shall deposit *one* copy (*b*).

Art. 1352. The author of a work of architecture, painting, sculpture, or other work of the same kind, shall present a drawing, sketch, or plan with information as to the dimensions and essential points of the original.

Art. 1353. The copies mentioned in Art. 1350 shall be deposited, one in the National Library, the other in the Public Archives.

Art. 1354. The copy of a musical work shall be deposited at the Philharmonic Society (*c*).

Art. 1355. The copy of engravings, &c., and the descriptive account mentioned in Art. 1352 at the School of Fine Arts.

Art. 1356. The author of an anonymous work, who wishes to enjoy copyright, must also append a sealed envelope containing his name.

Art. 1357. A register in which the deposited works are to be entered shall be kept at the Library, the Philharmonic Society, and the School of Fine Arts. The entries in the register shall be published monthly in the official journal.

Art. 1358. Office extracts from the registers shall be *prima facie* evidence of copyright, subject to proof to the contrary.

Art. 1359. A proprietor who does not fulfil the formalities prescribed in Arts. 1350–52 shall be liable to a fine of twenty-five pesos and shall remain liable to the deposit (*d*).

Art. 1360. Every new edition, translation, or reproduction requires a fresh deposit.

Art. 1361. The right of representation shall be legally recognised in accordance with the literary or artistic copyright.

Art. 1362. When an unpublished work, whether dramatic

(*a*) Said now to be three copies. 'Le Droit d'Auteur,' 1890, p. 100.
(*b*) Subsequently altered to *two* by the Code of 1884.
(*c*) Now one in the Conservatoire National, and the other in the Public Archives. Code of 1884.
(*d*) Peso = 4*s*. 3*d*.

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or musical, is performed without the consent of the author, he shall be allowed to prove his title in the ordinary way, and as soon as proof is given, the general provisions of this law shall apply to the person responsible for the unlawful representation.

Art. 1363. Agreements for the publication of a work ought to fix the number of copies to be printed. If this be not done, an action for piracy on this ground will not lie.

Name, &c., of author to appear on copyright works.

Art. 1364. Every author, translator, and publisher must put on the cover of the book or musical composition, at the foot of an engraving, and at the foot of or some other visible place of an artistic work, his name, the date of publication, the conditions of reproduction or the legal information which he shall consider proper.

Art. 1365. An author who has not observed the provisions of the preceding article, cannot exercise the rights conferred by this law on the fulfilment of such provisions.

Art. 1366. The assignee of a copyright having a limited duration shall only enjoy it for the unexpired period accorded by law.

Art. 1367. If the different co-proprietors of a work do not agree as to the exercise of the rights conferred upon them by law, the decision of the majority shall prevail, subject to the provisions of Art. 1299. If the majority does not decide, the judge shall.

Art. 1368. In the case contemplated by the preceding article, the product shall be divided proportionately, if it be possible to determine the share taken by each collaborator in the joint work, or in equal parts, if this cannot be done.

Art. 1369. For legal purposes, a person who has procured a work to be made at his expense, shall be considered as the author, subject to any agreement to the contrary.

Art. 1370. When an author's inheritance has devolved on the Public Treasury, according to law, copyright shall be extinguished, and the work become public property, without prejudice to the rights of creditors of the proprietor.

MSS. belonging to the State.

Art. 1371. The nation shall have copyright in all manuscripts of the archives, and federal administrations, as well as of the federal district and California. Consequently no one of these manuscripts may be published without the permission of the government.

Art. 1372. Permission will also be necessary for the publication of MSS., and the reproduction of artistic works

belonging to academies, colleges, museums, and other public institutions.

Art. 1373. Publication and reproduction of MSS. and artistic works belonging to the different states of the Republic cannot take place without the permission of their respective governments.

Art. 1374. If the works mentioned in the three preceding articles have been acquired by the State by agreement with the author, the terms of the agreement shall be adhered to.

Works published by government.

Art. 1375. Works published by government shall become public property ten years after their publication. This period shall be computed according to Art. 1282, and subject to the exception mentioned in Art. 1281.

Art. 1376. Nevertheless the government may prolong or restrict the period given by the preceding article, as it shall think desirable.

Works already published.

Art. 1377. Authors, translators, and their heirs, whose copyright is not extinguished at the date of the promulgation of this law, shall profit by its provisions, but they must, in order to obtain this benefit, fulfil the formalities prescribed by Arts. 1349–52.

Art. 1378. If the author or his heirs have alienated the copyright before the passing of this law, the assignee shall keep the right during the whole period assigned by the law in force in relation to copyright at the date of the assignment, and at the expiration of such period the property shall return to the author or his heirs, who shall enjoy it to the exclusion of other persons, and in conformity with the provisions of this law (*a*).

Prescription.

Art. 1379. Literary and artistic property shall be prescribed after ten years, to be calculated in the manner mentioned in Art. 1282; dramatic property in four years, counting from the first representation or performance.

Art. 1380. Property the subject of this law shall be considered personal property, subject to the modifications inherent to its special nature, and by which the law distinguishes it from other personal property.

Art. 1381. When the reproduction of a work shall be considered desirable, and the author does not reproduce it, the government may decree the reproduction: in such case it

(*a*) Two new clauses have been added by the Code of 1884, providing that when the author, translator, or publisher of a work which has fallen into the public domain dies without having established his right of property, his heirs cannot claim it, and that it is lawful for authors, translators, and publishers to fix a shorter period than that prescribed by the law for the enjoyment of their property in their works. 'Le Droit d'Auteur,' 1896, p. 82.

shall undertake it on the State's account or put it up to auction, subject to compensation to be paid to the proprietor and to the accomplishment of the other terms prescribed for expropriation on the ground of public utility.

Art. 1382. There can be no copyright in publications prohibited by law or withdrawn from circulation by a judicial sentence.

Translations.

Art. 1385. The translator of a work written in a foreign language shall have the same rights in his translation as an author.

Rights of Foreigners.

Foreigners residing in Mexico.

Articles 1383 and 1384 enable a foreigner residing in Mexico to obtain copyright in his work, whether he publishes in Mexico or abroad. These clauses are as follows:

Art. 1383. For legal purposes there shall be no distinction between Mexicans and strangers; it is sufficient if the work be published on Mexican territory.

Art. 1384. If a Mexican or a foreigner residing in Mexico publish a work outside the territories of the Republic, he may enjoy copyright, on condition of conforming to the provisions of Arts. 1349 to 1352.

Foreigners residing abroad.

As regards works of foreigners published abroad by authors who are not resident in Mexico, these are only protected on condition of reciprocity. Art. 1386 provides:

For legal purposes authors residing in foreign countries are to be treated precisely as Mexican authors, provided that Mexicans enjoy equal rights in the country of origin of the work.

As to this provision, the Mexican Minister in Paris in the year 1881 made an authorized communication to the Society of Comparative Legislation in Paris to the effect that "the reciprocity required by the law of Mexico is not subordinated to Mexican authors enjoying abroad the rights accorded in Mexico to foreign authors, but only to the law of the country according to Mexican authors the same rights as to natives. The Mexican law being more liberal than the laws of other countries, it follows that the foreign author enjoys in Mexico more extensive rights than in his own country (*a*)." This last assertion must not, however, be taken too literally, for, in the first place, foreigners must comply with the complicated and often expensive (*b*) formalities prescribed by Arts. 1349 *et seq*;

(*a*) Darris, 'Du droit des auteurs et des artistes,' p. 315. 'Le Droit d'Auteur,' 1895, p. 149.

(*b*) See 'Le Droit d'Auteur,' 1898, p. 135.

and, secondly, in the matter of translations foreigners are placed in an inferior position to natives by Art. 1156, which enacts: "Authors not residing on national territory and publishing their works abroad, enjoy the rights accorded by Art. 1154 (*a*) for a period of *ten* years."

Treaties and conventions.

The Pan-American Convention was signed at Mexico, and it is to the Mexican Government that the ratifications have to be communicated, yet Mexico has not herself yet ratified the Convention, though she has signed it. There are copyright treaties in force between Mexico and the following countries: Belgium (7th June, 1895), Ecuador (10th July, 1888), France (27th November, 1886), Italy (16th April, 1890), San Domingo (29th March, 1890), and Spain (26th March, 1903). On the 27th February, 1896, the President of the United States proclaimed Mexico as being entitled to the benefit of the Chace Act.

NICARAGUA.

Nicaragua.

Nicaragua has no law on literary and artistic property and no copyright treaty except one with Honduras, dated the 20th October, 1894. She has signed the Pan-American Convention, but only *ad referendum* (*b*).

PARAGUAY.

Paraguay.

Paraguay has no special law existing on copyright. A law was passed between the years 1862 and 1865, but it fell into disuse and has been so completely forgotten that in 1889 the actual text could not be found in the archives (*c*).

The Constitution of the 24th November, 1870, Art. 19, provides that every author or inventor has the exclusive property of his work, invention, or discovery, during the time fixed by law.

No law on the subject having been yet promulgated, literary property is protected in the same way as other property by the Civil and Penal Codes. Art. 342 of the Penal Code of the Province of Buenos Aires, adopted in Paraguay in the year 1880, enacts that "any one who publishes a literary production without the author's consent shall, if no copies have been circulated, be liable to a fine of from 25 to 500 pesos fuertes,

(*a*) According to Art. 1154 the author must reserve his rights of translation.
(*b*) She has also signed the Central American Convention. See under "Costa Rica," *ante*, p. 720, note (*e*).
(*c*) 'Lois françaises et étrangères,' par M. Lyon-Caen.

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otherwise "the fine shall be doubled, without prejudice to confiscation. The like penalties will be incurred by any one performing or causing to be performed a dramatic piece without the author's consent." Apparently these penalties do not exclude an action for damages.

At the instigation of the Argentine Republic, Paraguay was a signatory of the Convention of Montevideo, which she ratified on the 2nd September, 1889; and she has accepted the adhesion to that Convention of Spain, France, Italy, and Belgium. She has also signed the Pan-American Convention, but only *ad referendum*.

PERU.

Law of 3rd November, 1849.

Copyright in Peru is regulated by the law of the 3rd November, 1849, passed in execution of Art. 174 of the Constitution of the 1st November, 1839, which proclaimed the inviolability of intellectual property. The Constitution of 1860 now in force has in Art. 26 reaffirmed the principle of the earlier constitution by declaring that property is inviolable whether it be material, intellectual, literary, or artistic: no one can be deprived of his property except for some reason of public utility, recognized by law, and on payment of a previously fixed compensation (*a*).

The law of 1849 on literary property provides as follows:

Duration.

Art. 1. Authors of writings, geographical charts, engravings, and musical compositions, of whatsoever kind, shall enjoy during their life the exclusive right of being able to sell or circulate their works in the territories of the Republic, and the power of assigning their right in whole or in part.

Art. 2. The following are excepted from the right recognized in Art. 1: books and writings contrary to religion or good morals, and paintings or engravings which offend public morals; these works will be prosecuted in conformity with the laws.

Art. 3. The author's heirs and assigns shall enjoy the same rights for twenty years from his death.

Posthumous works.

Art. 4. The legitimate proprietors of a posthumous work shall enjoy the exclusive right during thirty years.

Deposit.

Art. 5. In order to prove at any time the copyright of a book, engraving, &c., it shall suffice to deposit a copy in the public library, if there be one, and another copy in the archives of the prefecture of the department where the work is published, except where there is a question or opposition

(*a*) 'Lois françaises et étrangères,' par M. Lyon-Caen. from which work the translation of the law of 1849 is taken.

raised by another person: in this case, the question must be decided by the tribunals. If the author desire not to disclose his name, he shall deposit at the prefecture a sealed and closed envelope, in which his name shall be inscribed.

Art. 6. Any person publishing or selling within the Republic pirated publications shall incur a fine of 200 to 500 pesos for the benefit of the author, to whom there shall, in addition, be handed over all the copies. Penalties.

Art. 7. Any person importing into or selling in the Republic publications made in a foreign country of works, the copyright of which belongs to another, shall be liable to confiscation of all copies in his possession; these shall be allotted to the proprietor of the work.

Art. 8. The author of a translation or version shall enjoy the same rights, provided he has fulfilled the formalities prescribed by Art. 5. Translations.

Art. 9. After the expiration of the periods mentioned in this law, the works, whatever they may be, shall become public property, and any citizen may freely print and sell them.

Rights of Foreigners.

The law of 1849 not having defined who are to fall within the category of "authors," and being conceived in generous terms, M. Darras has observed that possibly it might be held applicable to foreigners, whether resident in Peru or not, and whether publishing in Peru or abroad (*a*), but this view is probably too optimistic. At any rate, whilst Peru has ratified the Convention of Montevideo on the 25th October, 1889, she has expressly declared that she will not accept the accession of countries not invited to take part in the Congress of Montevideo in the same form as the accession of Spanish American countries invited to, but not represented at, that Congress (*b*). She has consequently refused to accept the adhesion of France, Italy, Spain, and Belgium to the Convention. Peru has nootlier copyright treaty. Foreigners.

SALVADOR.

Until the year 1900 copyright in Salvador was regulated by Art. 610 of the Civil Code of 1880, but on the 2nd June, 1900, a law was passed, of which the provisions are as follows: Law of 2nd June, 1900.

Art. 1. Authors of writings of every kind, musical compo- Copyright and its duration.

(*a*) 'Le Droit d'Auteur,' 1897, p. 139.

(*b*) See note under the heading "Peru" in the Collection of Copyright Treaties published by the International Bureau at Berne in 1904.

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sitions, works of painting, design, sculpture, and, in short, all original works, are to have during their lives the exclusive right of selling, manufacturing, or putting in circulation their works reproduced by printing, lithography, moulding, or any other process of reproduction or multiplication whatsoever.

Art. 2. Their heirs are to enjoy the same right for twenty-five years, but the work falls into the public domain, if the treasury be the heir. Likewise the work falls into the public domain if the heirs do not within a year make use of their rights or renounce them before the Minister of "Fomento."

Art. 3. Authors and their heirs may transfer their rights to third persons.

Art. 4. The proprietor of a posthumous manuscript containing corrections made by the author of a work published during his life, is to enjoy the property therein for a fixed period of twenty-five years.

Art. 6. Theatrical pieces may not be performed on any stage in Salvador without the permission of the author during his life or of his heirs during the period of twenty-five years granted them.

Art. 7. Corporations are entitled to copyright for fifty years from publication.

Art. 8. Translators of Latin or Greek works are protected for the like period as authors.

Formalities.

Art. 9. No Government document is necessary to confer copyright; it is sufficient to previously deposit a copy of the work with the Minister of "Fomento," and to indicate on the frontispiece to whom it belongs. Works manifestly immoral or contrary to public order will be forbidden.

Art. 10. The Government may accord privileges for a maximum period of five years to any one reprinting interesting works, provided the edition be correct and the permission of the proprietor be obtained.

Art. 11. At the expiration of the periods fixed by the preceding articles, a work may be considered common property, and any one may exploit it at his pleasure.

Penalties.

Art. 12. The penalties for piracy are a fine of from 100 to 1000 pésos and damages.

Art. 13. Authors or printers must send copies of their works to countries with which there may be treaties to this effect (*a*).

Periodicals.

Art. 14. Publications which have appeared in periodicals may be freely reproduced.

Art. 15. These provisions are without prejudice to treaties still in force.

(*a*) See the provisions of Pan-American Convention, *ante*, p. 691.

Rights of Foreigners.

Art. 5 of the above law provides that "foreigners who publish their works in Salvador shall enjoy the same rights as natives: likewise when, after they have been published abroad, a new edition shall be made in Salvador." Salvador has ratified the Pan-American Convention (decree of 16th May, 1902), and has treaties with the following countries: Costa Rica (12th June, 1895), France (2nd June, 1880), Guatemala (27th March, 1895), Honduras (19th January, 1895), and Spain (23rd June, 1884). A treaty, concluded on the 24th December, 1900, with Columbia does not appear to have been ratified by the latter country. Foreigners.

URUGUAY.

Uruguay has no special law on copyright, but the Civil Code of 1868, Art. 443, provides that the productions of talent or intellect are the property of their author, and that this property is to be regulated by special laws. Uruguay.

Uruguay has ratified the Convention of Montevideo, but has not accepted the adherence of any European country (*a*). She also signed, but has not ratified, the Pan-American Convention.

VENEZUELA.

The first copyright legislation in Venezuela was a law of the 19th April, 1837, which was replaced by a law of 12th May, 1887, closely modelled on the Spanish law of the 10th January, 1879, with the important exception that copyright was made *perpetual* in Venezuela. The law of 12th May, 1887, was a sufficiently satisfactory law, but in the year 1894 it was repealed and replaced by a new law of the 17th May, 1894, which required authors to comply with rigorous formalities in order to obtain copyright. The main provisions of the law of 17th May, 1894, are as follows (*b*): Early copyright laws.

Art. 1. "Author" means any person who composes a scientific, literary, or artistic work, and "translator" means any one who expresses a work in another language, distinct from that in which the original work or composition is expressed or written. Law of 17th May, 1894.

Art. 2. The right an author possesses over his composition, and the right acquired by translators over translated works or compositions, constitute intellectual property, which is sacred and inviolable like any other property, and is to be governed by

(*a*) See *ante*, p. 492, *note* (*c*). (*b*) From 'Le Droit d'Auteur,' 1895, p. 114.

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the rules of the common law, subject to any restrictions established by law.

Art. 3. Copyright in an original work belongs legally to its author, or in the case of a translation to the translator, provided no pre-existing (*a*) international treaty prevents.

Duration.

Art. 4. Copyright is, by its nature, perpetual, and the following persons are to enjoy it: (a) Authors in respect of their works; (b) translators with respect to their translations; (c) persons who alter, abridge, make extracts from, or reproduce original or translated works with the consent of their proprietors; (d) publishers of unpublished works the proprietors of which are unknown, provided they make legitimate use of their rights; (e) assignees; (f) the heirs and representatives of proprietors; and (g) the nation, when the proprietor dies without heirs.

Transfer.

Art. 5. Copyright may be assigned by acts *inter vivos*, and the assignee obtains copyright in perpetuity, provided the rules and formalities established by the common law are observed.

Right of reproduction.

Art. 6. The author of a scientific, literary, or artistic work has the sole right of reproduction in any form or by any means, and (Art. 7) the author of a literary or scientific work has the right of translation.

Collaborations.

Art. 8. Copyright in collaborations, in the absence of contrary agreement, belongs to the joint authors in equal shares, but each of them may sue for infringements.

Commentaries, &c.

Art. 9. The consent of the proprietor of the copyright is necessary to the publication of the works of another, even though accompanied by notes, comments, and additions, but commentaries, criticisms, and notes upon any work may be published, provided only the portions or texts necessary for the object in view be inserted.

Art. 10. As regards works of art, and, in particular, musical works, any reproduction or copy falsifying the original is a piracy, and the consent of the author or his representatives is necessary before reproducing the work of another in the same or any other dimensions.

Anonymous works.

Art. 11. The publisher of an anonymous or pseudonymous work is to be deemed its author, until the author proves his title.

Art. 12. A translator has copyright in his translation, but without the right to prevent other translations.

Translations.

Art. 13. A work may not be modified or altered without the consent of its author or his representatives.

Piracy.

Art. 14. Copyright in literary and scientific works extends

(*a*) *Sic.* The word is ambiguous and may mean either existing previously to this law or to the date when the work is published.

to all written or spoken exposures of their ideas, comprising not only works that have been published, but writings of all kinds. Consequently, no one may publish, without the author's permission, either in pamphlet or any other form, (a) oral lessons and lectures; (b) pleadings or written judgments; (c) parliamentary, academic, or other speeches, except in political journals.

This provision is not to affect the right of courts and tribunals to draw up authentic copies or documents.

Art. 15. Authors of speeches or writings the subject of the last preceding clause may publish or reproduce them in pamphlet or in any form they please.

Performing rights.

Art. 16. An injunction may be obtained against the unlawful public performance or execution of a literary or musical piece.

Art. 17. If the performance takes place in spite of the injunction the proprietor of the work is to be entitled to the total receipts, which may be recovered in a summary manner.

Art. 18. The author or proprietor of a dramatic or musical composition has the right to claim from the proper person that which the performance or execution of his work has produced (*a*) in a theatre or place of public spectacle, on conforming to the rules of the common law.

Art. 19. In case of performance of a lyrico-dramatic work, created in collaboration by the author of the libretto and of the music, the receipts or products are, in the absence of agreement to the contrary, to belong to the proprietors in equal shares, and (Art. 20) the author of the libretto and the musical part have each the right to print and sell separately the part of the work which he has created, but, in publishing the musical part, the text corresponding to the song may be added.

Formalities.

A register is established in the office of the governor of the federal district and in each of the offices of the State Presidents in which scientific, literary, and artistic works will be entered in chronological order. (Arts. 22 and 23.) The entry in the register is to give (a) the name and domicile of the person making the entry; (b) the title of the work; (c) the name of the author, translator, &c.; (d) the place and date of printing; (e) the edition, volumes, form, number of pages, and all other details which, in the opinion of the interested party, ought to be registered the better to assure his rights. (Art. 24.)

Request for protection.

Art. 25. In order to enjoy the benefits hereby conferred the author or translator or his representative should, before printing, engraving, or lithographing, address to the governor of the

(*a*) *i.e.*, semble, net receipts. Under the preceding clause he is entitled to gross receipts.

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district or the State President a request, containing the title of the work or composition, and, where registration is sought, the delivery of a "patent" to assure the copyright to the person entitled thereto.

Art. 26. Upon receipt of the request, the President or Governor must, in his presence, take the oath of the applicant that the work in question, if original, or the translation has not been printed, engraved, or lithographed previously either in Venezuela or abroad (*a*), after which the title is to be registered, and (Art. 27) a sealed patent delivered to the applicant in the prescribed form.

Art. 28. Besides the titles of written works, those of engravings, lithographs, architectural plans, geographical plans, and other artistic works, for which protection may be sought, are to be inscribed in the register or list kept at Caracas or in each State capital. At the bottom of these works are to be placed the words "Registered according to law," and underneath the signature of the proper authority (*b*).

Art. 29. The "patent" must be printed on the back of the title-page, and published at least four times in the official 'Gazette.

Art. 30. There are no fees for registration, but the patent is to be on properly stamped paper.

Art. 31. Six copies of the work must be deposited at the registry.

Penalties.

Art. 32. The offence of falsification in prejudice of intellectual property is to be punished according to the Penal Code (*c*). Any fraudulent action or breach directed against the said property constitutes this offence; consequently all are equally culpable who knowingly sell, expose for sale, or import pirated or falsified works. The responsibility falls, in the first place, on the author of the fraud, and, in his default, on the publisher and the printer, unless they respectively prove their innocence.

Art. 33. Besides the penal consequences, falsifiers or usurpers of intellectual property are to suffer confiscation of the piracies to the proprietor of the copyright, and the instruments of piracy to be destroyed.

Art. 34. Modification of the title of the work, alteration of the text and so forth, will be deemed aggravations of the offence.

Arts. 35 and 36 relate to procedure.

Posthumous works.

Art. 38. The property in posthumous works belongs to the

(*a*) This is no real protection to a foreign work, it only prevents a pirate from obtaining copyright in the work he has pirated.

(*b*) Presumably a copy of the signature.

(*c*) According to Art. 301 of the Penal Code of 1897, pirates are liable to imprisonment for a period of from one to twelve months and to a fine of from 50 to 2000 bolivars.

heirs or representatives of the author. Alterations, additions, annotations, and corrections left by an author relating to a previous work are considered posthumous works.

Rights of Foreigners.

Foreigners.

The only clause in the above law expressly referring to international rights is Art. 37, which authorizes the government "to conclude treaties and arrangements with friendly nations with a view to better realizing the doctrine upon which this law is based, provided that the government shall not accord to foreigners rights in excess of, or modifying, those conferred by the legislature upon intellectual property." No treaty has yet been concluded under the provisions of this article, and it is impossible to say whether, in the absence of a treaty, a foreigner is entitled to any protection in respect of his works in Venezuela. The law of 1894 does not define "author."

UNITED STATES.

Copyright the creature of statute.

In the United States copyright in a published work depends entirely upon the legislation of Congress (*a*), but unpublished works are protected by the common law, as in England (*b*).

Copyright Act, 1870.

The Constitution of 4th March, 1789, authorized Congress to "encourage the development of useful sciences and arts by according to authors and inventors for a limited term the exclusive right in their writings and discoveries," and this provision is the source of the federal legislative power in matters of copyright. Several earlier laws were passed by Congress relating to copyright, but all these were repealed in 1870, and the entire law on the subject embodied in an Act, though no alteration was made by this last law in the duration of copyright.

In 1873-4 the Copyright Act, with all other Statutes of the United States, was revised, and there have been since that date various amendments made in the law, notably by the Act of 1891, commonly known as the Chace Act (*c*).

Subjects of copyright.

The subjects of copyright under the Copyright Act of 1870 are "books (*d*), maps, charts, dramatic or musical compositions,

(*a*) 21 Davis' Rep. Supreme C. (Amer.) 244.

(*b*) *Tabor* v. *Hoffman*, 118 N. Y. 30; *Hoyt* v. *Mackenzie*, 49 Am. Dec. 178; *Johnson* v. *Roberts* (1899), 159 N. Y. 70; 'Harvard Law Review' (1904), p. 266. In *Wright* v. *Eisle* (83 N. Y. 887) it was held that an architect who had filed his plans with the city building department had lost his common law right by publication. See also Sect. 4967 of the Act of 1891.

(*c*) The statutes will be found in the Appendix D. The principal statute is founded upon the English Statute of Anne.

(*d*) It seems that in the United States a title will not be protected under the

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engravings, cuts, prints or photographs, or negatives thereof, or of any paintings, drawings chromos, statues, statuaries, and of models or designs intended to be perfected as works of the fine arts" (*a*).

Pictures.

By section 3 of the amending Act of 18th June, 1874, it is enacted that in the construction of that Act the words "engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law. This provision does not render it necessary for the courts to enter into discussions as to the merits of a work; but "pictorial illustrations" are opposed to "prints or labels designed to be used for articles of manufacture." A circus "poster" has been held entitled to protection (*b*).

The right of reproducing a picture may be severed from the ownership of the picture.

By section 4952 of the Act of 1870, as amended by the Chace Act of 1891, copyright may be acquired by "the author, inventor, designer, or proprietor . . . and the executors, administrators, or assigns of any such person." The assignee of the right of reproducing a picture falls within this provision, and it has been held that such a person can prevent the importation into the United States of photographs of the original picture taken abroad (*c*). But apparently, in such a case, the picture itself, if published, must have been copyrighted in the United States (*d*).

Speeches, lectures, &c.

There does not appear to be any express provision conferring protection upon speeches in the United States, but in the year 1894 Professor Henry Drummond obtained an injunction against the publication, under his name, of a garbled edition of some lectures delivered by him at Glasgow in Scotland (*e*). This injunction was granted, not upon the ground of copyright, but on the ground of the Professor's common law right to prevent publication under his name of a work which was not effectively his.

copyright laws independently of the contents of the book. This was the decision of the United States Circuit Court in the *Benn-Leclery Case*. But the Courts will protect a title as a trade mark: *Oxford University* v. *Wilmore Andrews Publishing Co.*, 38th April, 1900, New York Federal Court; *Gannett* v. *Rupert* ('Publishers Weekly,' 16th Jan., 1904).

(*a*) As to what articles are entitled to protection, see 'Information Circular,' No. 27, Appendix D.

(*b*) *Bleistein* v. *Donaldson Lithograph Co.* (1903), 102 O. G. 1553.

(*c*) *Werkmeister* v. *Pierce & Bushnell*, Federal Court, Massachusetts, 7th August, 1894; *Werkmeister* v. *The Springer Lithographing Co.*, Federal Court, New York, 4th October, 1894.

(*d*) *Werkmeister* v. *Pierce & Bushnell*, on appeal, 24th January, 1896.

(*e*) *Drummond* v. *Artemus* (1894), 60 Fed. Rep. 339.

Duration of copyright.

The term of copyright in the United States is an original term of twenty-eight years from the time of the registration of the title of the work (*a*), with an additional term of fourteen years to the author, inventor, or designer if he be still living, or his widow or children if he be dead, provided he or they comply with the same formalities as are required in regard to original copyrights, within six months *before* the expiration of the first term, and within two months from the date of renewal, cause a copy of the record thereof to be published for the space of four weeks in one or more newspapers printed in the United States (*b*).

The resulting or contingent term secured to the author by the above section will not pass under an assignment of "the copyright of the book," for the word "copyright" embraces only the term capable of being secured at the date of the assignment (*c*), and it is doubtful whether a general assignment by the author of all his interest in the copyright would deprive his widow and child or children, living at the date of the assignment, of their rights in the event of the author's death (*d*).

Assignment of copyright.

Copyrights are assignable in law by any instrument of writing, and such assignments must be recorded in the office of the Librarian of Congress within sixty days after their execution; in default of which they will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice (*e*).

Deposit of title and published copies.

Copyright in a published work is dependent upon the accomplishment of certain formalities. By sect. 4956 of the Act, as amended by the Act of 1891, it is provided that no person shall be entitled to a copyright unless he shall on or before the date of publication in the United States or any foreign country deliver at the office of the Librarian of Congress or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed (*f*) copy of the title of the book or other article, or a description of the painting, drawing, statue, statuary, or model or design for a work of the fine arts, for which he desires a copyright, nor unless he also, not later than the day of publication in the United States or any foreign country, delivers at

(*a*) Sect. 4953. (*b*) *Ib.* 4954.

(*c*) *Pierpont* v. *Fowle*, 2 Wood & Min. 23.

(*d*) See cases decided under a similar provision contained in the 8 Anne, c. 19; *Carnan* v. *Bowles* (1786), 2 B. C. C. 80, and *Kennett* v. *Thompson*, there cited; and *Rundell* v. *Murray* (1821), Jacob 315. (*e*) Sect. 4955.

(*f*) A written copy apparently will not be a compliance with the Act.

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the office above, or deposits in the mail addressed as aforesaid, two copies of such copyright book or other article, or in the case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same.

Copies to be printed from type set in United States.

Then it is provided by the Act of 1891 that in the case of a book, photograph, chromo or lithograph, the two copies required to be delivered or deposited must be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stone made within the limits of the United States, or from transfers made therefrom.

This "manufacturing clause," it will be noticed, is confined to the case of books, photographs, chromos, and lithographs, and it has been held that compositions of a musical or dramatic character, though in the form of books, need not be printed from type set in the United States (*a*); and, though the section requires that the type shall be set in the United States, it does not state that the actual printing shall be done there, and the Treasury Department has decided that sheets printed abroad from types set up in the States is not prohibited from importation under sect. 4956 as amended by the Act of 1891 (*b*).

The registration of the title of a work and the deposit of two copies not later than the day of publication are absolutely essential in order to obtain copyright; if either requirement be omitted the work falls into the public domain. The law also renders it necessary before proceedings be taken for infringement, that there shall be inserted on the several copies of every edition published, on the title-page or the page immediately following, if it be a book, or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or on the substance on which the same shall be mounted, the following words, viz., "Entered according to Act of Congress, in the year ——, by A. B. in the office of the Librarian of Congress at Washington"; or, at his option the word "copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out: thus, "Copyright, 18—, by A. B." (*c*). Failure to perform this

Publication of notice of entry for copyright prescribed.

(*a*) *Littleton* v. *Oliver* (1894), 62 Fed. Rep. 597.

(*b*) 'Le Droit d'Auteur,' 1904, p. 6.

(*c*) Sect. 4962 and Act of 1874, s. 1. Art. 5 of the law of 3rd February, 1831, enacted that no one should "enjoy the benefits of this law" without making the necessary inscription. It was under this last mentioned law that the cases of *Mifflin* v. *White* (1902), 190 U. S. 260, and *Mifflin* v. *Dutton* (*ib.* 265) were decided. In the years 1858 and 1859 'The Professor at the Breakfast Table,' by Oliver Wendell

condition does not apparently imperil the copyright, but only renders the proprietor incapable of suing for infringement. The words must, however, be inserted in every edition of the work.

Penalty for false publication of notice of entry.

A penalty of 100 dollars is imposed upon any person inserting or impressing such notice or words of the same purport in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, or other article, whether capable of protection or not, for which he has not obtained a copyright, or who knowingly circulates or sells a work containing a notice relative to protection in the United States without such protection having been obtained, half of such penalty to belong to the person suing for such penalty and the other half to the use of the United States (*a*).

Formalities must be strictly complied with.

Copyright in published works being in the United States entirely a creature of statute the formalities prescribed by the law must be strictly followed. Any departure therefrom will endanger the copyright or the right to sue for infringement; but where the copyright in a story belonged to the Daily Story Publishing Co., and they granted a licence to publish this story to the 'St. Louis Globe Democrat,' the latter agreeing to print the necessary copyright notice with the story, but neglecting to do so in fact, Judge Kohlsaat of Chicago held that the Daily Story Publishing Co. were not prejudiced by the omission of their agents, and his decision was affirmed by the Court of Appeal (*b*).

Magazines and periodicals.

There is no provision in the United States Act similar to that in sect. 19 of the English Literary Copyright Act providing that registration of the first number of a magazine shall entitle all subsequent copies to protection, but, on the contrary, sect. 11 of the Act of 1891 enacts that for the purposes of the Act each volume of a book in two or more volumes, when such volumes are published separately, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting provided by the Act. Moreover, it would seem that registration of the number of a

Holmes, and the 'Minister's Wooing,' by Harriet Beecher Stowe, were being published serially in the 'Atlantic Monthly,' but, apparently, the proprietors of that magazine neglected to obtain copyright protection until a date when only a few chapters remained unpublished. The stories were then issued in book form and copyrighted by their respective authors. The remaining parts were thereafter published in the succeeding numbers of the magazine and were copyrighted by the publishers, and notice of such copyright in their name was printed in the magazine. It was held that the parts which had appeared in the magazine prior to any copyright being obtained had become public property, and that as to the remaining parts the author's copyright was vitiated by the copyright notice printed in the magazine giving the name of the publishers instead of the author as proprietor of the right.

(*a*) Sect. 4963 as amended by the law of the 3rd March, 1897.

(*b*) 31st October, 1902.

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periodical in which a story appears does not necessarily have the effect of securing copyright for that story, but that the story ought to be separately entered under its own title (*a*).

Translation and dramatization.

By the Act of 1891 the right of dramatizing or translating his work is reserved to the author.

Right of public performance.

The right of representation and performance of unpublished works is protected by the common law, and the owner of the right can sue for infringement without compliance with any formalities, performance not being considered publication in America (*b*). But, once the work is published, the right of representation and performance are conditional on the published work having been duly entered as copyright.

The Act of 1891 did not protect the right of performance of musical compositions, and in the case of public performance of a dramatic composition without consent of the proprietor, the latter's only remedy was to sue for damages. The law of 1st January, 1897, now imposes penalties for infringing the performing rights in either dramatic or musical compositions when published, but a difficulty has been experienced in protecting common law right of performing manuscript plays, for a purely civil action had no terrors for strolling theatrical companies moving rapidly from one State to another. Recently, however, several of the States have passed laws imposing penalties of fine or imprisonment for unlawful performances of unpublished plays or musical compositions (*c*).

(*a*) *Mifflin* v. *White Co.* (1902), 190 U.S 260; cf. *Tribune Co. of Chicago* v. *Associated Press* (Chicago Federal Court, 1902).

(*b*) *Palmer* v. *Dewett* (1870), 23 L. T. 823.

(*c*) The right to pass copyright laws is reserved to the Federal legislature, but the laws referred to in the text relate strictly to property which has not secured copyright. Laws protecting unpublished plays and musical compositions have been passed by the following States: New York and Pennsylvania, New Jersey, Ohio, Louisiana, and Oregon. Proposals for similar laws are before the Parliaments of Massachusetts, Virginia, Rhode Island, Kentucky, and Iowa. A curious "copyright" case has been decided in the New York United States Circuit Court by Judge Lacombe. Miss Loie Fuller asked for an injunction against Miss Minnie Renwood Bemis to restrain her from dancing the "serpentine" dance during the summer on the roof of Madison Square Garden. Miss Fuller asserted that she originated the dance, and, having secured the copyright, it was her own exclusive property. Judge Lacombe thought otherwise, and refused to grant the injunction. He said: "It is essential to such a composition that it should tell some story. The plot may be simple, it may be but narrative or a representation of a single transaction, but it must repeat or mimic some action, speech, emotion, passion, or character, real or imaginary. When it does, its ideas thus expressed become subject of copyright. An examination of the description of the complainant's dance, as filed for copyright, shows that the end sought for and accomplished was the illustrating and devising of a series of graceful movements combined with an attractive arrangement of draperies, lights, and shadows, telling no story, portraying no character, depicting no emotion. The mere mechanical movements by which effects are produced on the stage are not subjects of copyright. Surely the dance described here conveyed, and was designed to convey, to the spectator no other idea than that of a comely woman illustrating the poetry of motion in a singularly graceful fashion, and, while such an idea may be pleasing, it can hardly be called dramatic."

The penalty for the infringement of the copyright in a book is the forfeiture of every copy thereof to the proprietor, and the payment of such damages as he may recover in a civil action. The penalty for infringing the copyright in any map, chart, dramatic, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, is the forfeiture to the proprietor of the copyright of all plates on which the same shall be copied, and every sheet thereof either copied or printed, and of one dollar for every sheet of the same found in his possession (*a*), either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary the forfeiture of ten dollars for every copy of the same in his possession or by him sold or exposed for sale (*b*).

Remedy for infringement of copyright.

The legislature, moreover, acting on the theory that in order to give effective protection to the proprietor of the copyright, the American market must be secured to him, but, apparently, considering that that market is only valuable in the case of books in the English language, by sect. 4956 of the Act, as amended by the Act of 1891, prohibits the importation of copyright books in the English language. That section enacts that during the existence of American copyright the importation into the United States of any copyright book, chromo, lithograph, or photograph, or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone made within the limits of the United States are prohibited, except in cases specified in paragraphs 512 to 516 inclusive in section 2 of the Act entitled "An Act to reduce the revenue and equalize the duties on imports, and for other purposes," approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such work at any one time; and except in the case of newspapers and magazines not containing in whole or in part matter protected under the provisions of the Act, unauthorized by the author, which were thereby exempted from prohibition of importation. Provided, nevertheless, that in the case of books in foreign languages, of which only translations in English are copyright, the prohibition of importation is to apply only to the translation and the importation of the books in the original language is to be permitted.

Prohibition against importation.

(*a*) *Thornton* v. *Schreiber*, 17 Davis Rep. (Amer.) 612.
(*b*) Sects. 4964–5 as amended by the Act of 1891, sect. 3.

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The "free list."

The Act approved on 1st October, 1890, referred to in the above section, is that known as the "McKinley Act," and Arts. 512 to 516 contained the "free list," which included works printed over twenty years, books and pamphlets (*a*) printed exclusively in a language other than English, those made for the use of the blind, those imported for the public libraries and learned societies, and those imported *bonâ fide* by immigrants, provided they have been in use for a year at least. The "McKinley Act" has been repealed and a new Act was substituted in 1897, which contains a very similar "free list," and apparently sect. 4956 is now to be read as though the "free list" of the 1897 Act were referred to instead of the "free list" of the Act of 1890.

Regulations issued by the Treasury.

The interpretation of the Customs Laws of the United States has been committed to the Treasury Department, and in the year 1891 the following regulations were issued by that department:

1. "Copyrighted" books and articles of importation which are prohibited by sect. 4956 of the Revised Statutes, as amended by sect. 8 of the said Act, shall not be admitted to entry. Such books and articles, if imported with the previous consent of the proprietor of the copyright, shall be seized by the collector of customs, who shall take proper steps for the forfeiture of the goods to the United States under sect. 3082 of the Revised Statutes.

2. "Copyrighted" books and articles imported contrary to the said prohibition without the previous consent of the proprietor of the copyright being primarily subject to forfeiture to the proprietor of the copyright, shall be detained by the collector, who shall forthwith notify such proprietor in order to ascertain whether or not he shall institute proceedings for the enforcement of the right to the forfeiture. If the proprietor institutes such proceedings and obtains a decree of forfeiture, the goods shall be delivered to him on payment of the expenses incurred in the detention and storage, and duties accruing thereon. If such proprietor shall fail to institute such proceedings within sixty days from date of notice or shall declare in writing that he abandons his right to the forfeiture, then the collector shall proceed as in the case of articles imported with the previous consent of the proprietor.

(3) "Copyrighted" articles, the importation of which is not

(*a*) French almanacs containing twelve pages, one for each month, the days weeks, and feast days being indicated, and blank spaces left for notes, have been permitted free entrance. 'Le Droit d'Auteur,' 1904, p. 6.

prohibited but which, by virtue of sect. 4965 of the Revised Statutes as amended by sect. 8 of the said Act, are forfeited to the proprietor of the said copyright when imported without his previous consent, and are, moreover, subject to the forfeiture of one dollar or ten dollars per copy, as the case may be, one-half thereof to the said proprietor and the other half to the use of the United States, shall be taken possession of by the collector, who shall take the necessary steps for securing to the United States half of the sum so forfeited, and shall keep the goods in his possession until a decree of forfeiture is obtained, and the half of the sum so forfeited, as well as the duties and charges accrued are paid, whereupon he shall deliver the goods to the proprietor of the copyright. In case of failure to obtain a decree of forfeiture, the goods shall be admitted to entry.

Books printed in foreign languages may be imported.

As to books in foreign languages the Treasury Department decided on the 13th April, 1899, that "books translated and printed exclusively in a language other than English are not subject to the prohibition against importation provided in Art. 3 of the law of 3rd March, 1891, and may be imported, free of duty, although the editions in the English language may be copyrighted in the United States." Art. 3 above referred to, on the other hand, provides that "in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the orginal language shall be permitted." It follows, therefore, that if an English translation has alone secured copyright in America, there is nothing to prevent the importation of the original work, provided it does not contain a word of English (*a*). It would also seem to follow from the above-mentioned decision of the Treasury that if an original work in a foreign language has secured copyright in the United States, the owner of the copyright cannot prevent importations of copies in the original language; but, of course, though the author cannot prevent importation, he is not therefore deprived of the remedies given him by sects. 4964–5 (*b*). The Treasury Department has recently decided that works *printed* abroad from type set in the United States or from plates made therefrom may be imported into the States, inasmuch as sect. 4956 does not require that the work shall be printed in America, but only that the material for printing shall be made there (*c*).

Works printed abroad from type set in the States may be imported

(*a*) 'Le Droit d'Auteur,' 1899, p. 119. (*b*) *Ante*, p. 765.
(*c*) 'Le Droit d'Auteur,' 1904, p. 6.

PART VI.

UNITED STATES.

Rights of Foreigners.

Until 1891 copyright could not be obtained except by an American citizen or person permanently residing in the States.

Until recent times a foreign author or publisher had no right as against an American publisher who reprinted and issued his work in America. The first Copyright Act of 1790 was expressly applicable only to citizens of the United States or persons resident there, and this provision was maintained in all subsequent amendments of the law, until the year 1891. Moreover, according to the interpretation placed upon this provision, a temporary residence in the States, even though with a declared intention of becoming a citizen, was not sufficient. Captain Marryat, the well-known novelist, a subject of Great Britain, and an officer under our government, being temporarily in the United States, took the required oath of his intention to become a citizen, and then took out a copyright for one of his books and assigned the same to the plaintiff; but it was nevertheless held that the author was not "resident" within the meaning of the Copyright Act, so as to be entitled to a copyright in his book (*a*).

But where the intention of continuing in the United States existed at the time of publication, the courts held the author to be a resident within the meaning of these Acts. Thus in *Boucicault* v. *Wood* (*b*), it appeared that the plaintiff, who was a native of Great Britain, had been in the United States from 1853 to 1861, when he returned to the former country. During this period he had registered certain plays which he had written and taken the usual steps to secure the copyright. The defence was, that the plaintiff, being a foreigner, was not entitled to copyright in this country. The jury was directed

(*a*) *Clay* v. *Collier*, 56 Niles Reg. 262: Betts, J. The assignee of the work composed by a non-resident alien could not under these Acts have obtained a copyright in respect thereof. Three suits were begun by Messrs. A. and C. Black, of Edinburgh, and the Scribners, their American agents, against an American firm which had published a pirated edition of the 'Encyclopædia Britannica' from photographic plates, charging infringement of the American copyright law because the republication contained articles written by Americans and protected by the copyright laws of this country. The defendants entered demurrers based on the general ground that the publishers of the 'Encyclopædia Britannica,' in employing American authors to treat of American topics and then publishing their articles under copyright, thereby laid a trap for the American public and American publishers, and therefore a court of equity would not interfere to protect such a fraud. Judge Shipman overruled the demurrers, and declared that the assignments in no way permitted other parties to infringe authors' copyrights. The decision, which was given on the 25th June, 1890, in the United States Circuit Court, was of the greatest importance to the plaintiffs, as there were at the time three photographic editions of the 'Encyclopædia Britannica' selling at about a seventh of the price of the authorized edition. The case has been followed by Judge Townsend on 25th April, 1893 (*Black* v. *Allen*).

(*b*) 2 Bliss 38; 7 Amer. Law Reg. 539, 545.

to find whether Boucicault, when he entered his copyright, intended to make the United States his home. It was found that such intention then existed in his mind, and accordingly the copyright was held to be valid.

The evils of this system.

It followed from this state of the law that immediately on publication of a work in this country it might have been with impunity reproduced on the other side of the Atlantic, and there was no obligation on the part of the American publisher to pay a single farthing in respect of the copyright. British authors and publishers were the chief sufferers, by reason of the common language of the two nations. Authors had, of course, power to prevent the importation of these pirated copies into this country, if they could discover the guilty persons, but the real hardship (if so it may be called) was that by reason of the reproduction in America, by the American publisher, they lost that profit which would otherwise have accrued from the sale of the copies, in which they had an interest, to the American public. American readers are infinitely more numerous than English, and the English author frequently found—and, it may be said, still finds—that whereas in this country he had realised perhaps next to nothing, the American publisher, who reproduced his work, made large profits thereby.

The United States had many advantages over this country from the absence of an international law of copyright, and the great disparity of interest which the two countries would respectively reap from such an arrangement has always been one of the greatest difficulties in the way of any arrangement and settlement of the question being come to. Though the works of American authors are becoming increasingly popular in England, yet they are far less in demand here than the works of British authors are in the United States; and in addition to this, the reproducer in America has a wider public to provide for than his rival in this country. The American publishers were themselves to a great extent protected by their custom in the publishing trade that the man who first re-issued any work of an English author retained a monopoly of future productions from the same pen. No other publisher would interfere with him, and, practically, the only way in which an English author could secure any remuneration was by making an arrangement with an American publisher whereby he agreed to let the publisher have advance copies of his work, so as to enable the publisher to secure the American market in advance of his rivals. Of course, it was only writers of established reputation who were able to obtain even such an arrangement

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as this, and, generally, the English author was left completely at the mercy of the American publisher.

The Chace Act, 1891.

After numerous futile attempts to remedy this state of affairs, some slight relief has been afforded by the Chace Act of 1891. Under this law the restriction of copyright to citizens of the United States and persons resident there has been suppressed (*a*), and, except for the somewhat paltry provision that the fee to a foreigner on registration of copyright is half a dollar more than to an American, the rights of foreigners are assimilated to those of natives, provided, nevertheless (*b*), that foreigners, in order to enjoy the benefits of the Act, must be citizens or subjects of a foreign state or nation which permits to Americans "the benefit of copyright on substantially the same basis as its own citizens," or of a state or nation which is "a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, became a party to such an agreement" (*c*).

What countries comply with the necessary conditions.

Whether a state or nation to which a foreigner belongs fulfils either of the above-mentioned conditions is not a matter to be determined by the tribunals, but by the executive, a proclamation by the President being conclusive evidence in a court of justice that a particular nation does comply with the necessary conditions in the matter of reciprocity (*d*). Proclamations have been issued with regard to the following countries: Great Britain, Belgium, France, and Switzerland (1st July, 1891); Italy (31st October, 1892); Denmark (8th May, 1893); Portugal (20th July, 1893); Spain (10th July, 1895) (*e*); Mexico (27th February, 1896); Chili (25th May, 1896); Costa Rica (19th October, 1899); Netherlands (20th November, 1899); and Cuba (17th November, 1903) (*f*).

Differences between Chace Act and Berne Convention—(a) protection

It would be a mistake to suppose that there is any analogy between the American Chace Act and the Berne Convention. Under the Berne Convention the nationality of the author is of no importance; provided the work be published in some

(*a*) Sect. 1 of the Act of 1891. The Act has no retrospective operation.

(*b*) Sect. 13 of the Act of 1891.

(*c*) The President of the United States has determined that the Berne Convention is not such an international agreement as is referred to in this section. See 'Le Droit d' Auteur,' 1891, p. 94. (*d*) See Sect. 13 of the Act of 1891.

(*e*) Since the conclusion of peace, the war between Spain and America has not affected the position of Spain. No fresh proclamation was considered necessary. See exchange of Notes between the respective Governments, 29th January and 26th November, 1902.

(*f*) Germany has a special treaty with the United States on the subject of copyright. See *post*.

country of the Union it obtains copyright throughout the Union, although the author be not a subject of the country in which he publishes. In America the person taking out copyright must be a subject of a "proclaimed" country. For instance, a citizen of an unproclaimed country cannot, by publishing simultaneously in, say, Great Britain and America, obtain American copyright (*a*), and citizens of unproclaimed countries resident in America would appear now to be in a worse position than they were before the Chace Act, and to be incapable of acquiring American copyright there unless they become naturalized.

only granted to subjects of proclaimed countries.

Again, under the Berne Convention, an author having obtained copyright in the country of first publication and complied with the formalities required by the law of that country obtains copyright in the other countries of the Union without having to accomplish any other conditions or formalities, but American law does not recognize any copyright other than American copyright, and the effect of the Chace Act is merely to permit foreigners to obtain American copyright under certain conditions.

(b) formalities prescribed by American law must be observed.

Whether, therefore, a foreigner secures copyright in his work in any or what other country or not is immaterial—if he seeks protection in America he must accomplish exactly the same conditions and formalities as a native author, but whilst these formalities are burdensome enough for the native, they are doubly burdensome to the foreigner. In addition to registration of the title a deposit of copies of the work must be made not later than the day of publication of the work in America or any other country; and, moreover, if the work to be protected be a book, photograph, chromo or lithograph, the copies have to be printed from type set within the limits of the United States (*b*). Finally, every copy must have inscribed upon it "Copyright, 1 , by "—an inscription which, in the case of a work of art, to most eyes will seem a disfigurement. To add to the difficulties of painters and sculptors there is a decision of the Court of Appeal, on appeal from the Circuit Court of Massachusetts, that reproductions of an original work will only be protected in America if the original itself have these words inscribed upon it at the time of publication in a foreign country, even though the work be intended to remain abroad or is in the hands of a

Difficulties of obtaining copyright in America.

(*a*) He might, however, assign his MS. to a British publisher before publication. See *Cutler, Smith, & Weatherley* on Musical and Dramatic Copyright.

(*b*) The actual printing may, however, be done abroad and the book imported in sheets, provided the type itself has been set in America. See *ante*, p. 767.

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private purchaser, and only reproductions are proposed to be published in America (*a*). According to the same decision, the public exhibition of a picture is equivalent to publication.

It will be gathered from the above that many difficulties lie in the way of a European author receiving protection for his works in the United States. It is not easy to arrange for a simultaneous publication on two sides of the ocean, and in the case of periodical literature it is practically impossible. To well-known and popular authors of the day the "manufacturing clause" may be a comparatively slight obstacle, but publishers are not likely to run the risk of publishing an American edition of the work of an unknown or unrisen author, and foreign photographs must go wholly unprotected, since it would be impossible to transport the objects to be photographed to America in order to "make" the negative there.

At the same time it would be incorrect to say that the Chace Act had been productive of no benefit to foreign authors. Branch publishing houses have been opened in America by several of the larger British publishing houses, and in the year 1902–03 over 9000 foreign works were registered at Washington (*b*), of which the majority probably were musical works, which, as we have seen, do not require to be printed from type set in America (*c*).

Stories published serially.

We have pointed out the difficulty in securing copyright for a foreign magazine in America. This difficulty presses especially upon the writers of serial stories, and it has been suggested that the difficulty may be got over by producing the book in America simultaneously with the first instalment being issued in England, and producing also in England, say eight copies of the book at a prohibitive price—five for the libraries, the rest for those who like buying scarce articles; this would be publication simultaneously of the whole book here and in America, but not a publication that would injure the run in the serial.

There is no doubt that the publication in the columns of a newspaper from type set within the limits of the United States would satisfy the American Act and afford a valid protection of the American copyright, and the author or his assigns would be left free to publish in book form if and when he desired. This is mentioned because undoubtedly in many

(*a*) *Werkmeister* v. *Pierce & Bushnell*, 24th Jan. 1896. See 'Le Droit d'Auteur,' 1897, p. 90.

(*b*) 'Le Droit d'Auteur,' 1903, p. 127.

(*c*) It would seem that in cases where the illustrations form the chief value of a book, practical protection could be obtained by securing copyright for the illustrations without securing it for the text.

cases new writers find it much easier to secure American publication in serial than in book form.

How far foreign authors entitled to copyright in alterations.

A question has been raised, seeing that the Chace Act has no retrospective effect, as to how far foreign authors are entitled under section 5 of the Chace Act to American copyright in alterations, or revisions of, or additions to, their books previously published in the States. The proviso to that section enacts "that the alterations, revisions, and additions made to books by foreign authors heretofore published, of which new editions shall appear subsequently to the taking effect of this Act, shall be held and deemed capable of being copyrighted as above provided in this Act, unless they form part of the series in course of publication at the time this Act shall take effect." The opinion of Sir Horace Davey (when at the Bar) and Mr. J. Rolt was taken by the Society of Authors (*a*) upon the point whether British authors are entitled to copyright under this section in cases where they have absolutely parted with their English copyright in such alterations, revisions, or additions, or in the books to which they relate. The opinion was as follows: "English authors will, in our opinion, be entitled to American copyright in alterations, revisions, or additions to their books previously published in the States, unless the additions form part of a series or of a work published in parts in course of publication at the time when the Act takes effect. Where an author has already parted with his English copyright in such alterations or additions, or in the books to which they relate, he would not, in our opinion, be entitled to American copyright, unless under some special agreement or reservation in his favour."

Proposals to amend the Chace Act.

The amendments of the Chace Act proposed since 1891 have been numerous, but the strong protectionist sympathies of the American people—and, in particular, of the Typographical Union—have hitherto prevented any modification of the "manufacturing clause" in the Act. There is at the present time before Congress a proposal which seems to have some chance of passing into law, whereby books originally published in a foreign language may obtain copyright within a year of their first publication in another country, but, whilst this proposal might afford some measure of relief to continental authors, it would afford none to British authors.

Conventions and treaties.

The entry of America into the Copyright Union would be an event hailed with satisfaction by literary men throughout

(*a*) This Society—founded with the object of protecting the interests of authors generally—has done excellent service in elucidating the copyright law. The Copyright Bills of 1900 were promoted by the Society.

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the world, but, for the present, her "manufacturing clause" remains an insuperable barrier. Nevertheless, such an intelligent nation will surely sooner or later recognize that the piratical editions of foreign works that are sold in the country for a few cents must prejudicially affect her native literature, and the day when she enters the Union will mark the close of many a copyright controversy.

In the year 1902 the United States signed the Pan-American Convention, but only *ad referendum*.

A treaty relating to copyright matters which has been concluded by America with Germany is dated the 15th January, 1892, and provides as follows:

1. The citizens of the United States of America shall enjoy in the Empire of Germany the protection of copyright in works of literature and arts, and also in photographs against piracy, on the same legal basis with which the subjects of the Empire are treated.

2. In return, the government of the United States engages that the President of the Republic will make the proclamation provided for by Art. 13 of the law of Congress of the 3rd March, 1891, with the view of extending the provisions of this law to German subjects, as soon as the Secretary of State shall have received the official communication of the ratification of the treaty by the legislation of the German Empire.

3. The present treaty shall be ratified at Washington as soon as possible.

It shall come into force three weeks after the exchange of ratification, and shall only apply to works not then published. It shall remain in force until three months after it has been determined by either of the contracting parties (*a*).

Recently a treaty has been concluded with China (*b*), by the terms of which, in consideration of obtaining the benefits of the American copyright law in favour of his subjects, the Chinese Emperor undertakes to protect against infringement for a period of ten years from registration, upon the same basis as trade marks are protected, American books, prints, or engravings prepared specially for the use and education of the Chinese or translations of works into Chinese; but the Chinese are to be at liberty to print and sell original translations into their language of all American works.

(*a*) This treaty causes a good deal of dissatisfaction in Germany, and the German Government has been urged to denounce it. See under Germany, *ante*, p. 586.

(*b*) Dated the 8th October, 1903; promulgated in the United States 13th January, 1904. 'Le Droit d'Auteur,' 1904, p. 14.

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HAWAÏ.

In the year 1898 Hawaï was annexed by the United States. This country possessed a copyright law dated the 23rd June, 1888, the provisions of which were set out in the last edition of this work, and this law was provisionally kept in force until the 14th June, 1900, when a United States law providing for the "establishment of a government in Hawaï" came into force. This last-mentioned law had the effect of repealing the Hawaïan copyright law of 1888 (*a*), and apparently copyright in Hawaï is now governed by the laws of the United States.

CUBA, PORTO RICO, and the PHILIPPINES.

There has been considerable doubt as to the position of the three colonies of Cuba, Porto Rico, and the Philippines, which, after the war with America and Spain, ceased to be under Spanish dominion; and, in the case of the Philippines, at any rate, this doubt seems still to exist.

Effects of Spanish-American War.

These countries had no special copyright laws of their own, but the Spanish law on the subject extended to them; and, moreover, when Spain joined the Berne Convention she joined on behalf of her colonies as well as on behalf of herself. The loss of these colonies to Spain, therefore, endangered the rights both of Spaniards and natives, and of authors publishing in the various countries of the Copyright Union.

Treaty of Peace.

The rights of Spaniards were safeguarded to some extent by the Treaty of Peace concluded at Paris on the 10th December, 1898, which came into force on the 11th April, 1899. Art. 13 of this treaty provides that "the rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary, and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty."

Spanish works, therefore, published before the 11th April, 1899, are entitled to copyright, under the Spanish law of 1879, for the life of the author and eighty years after, and they are admissible free of duty for ten years from the same date. The Treaty of Peace is, however, silent as to the rights of persons

(*a*) See a despatch, dated 7th September, 1900, from the British consul at Honolulu to the Foreign Office. 'Le Droit d'Auteur,' 1900, p. 157.

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Ordinances of military governor of Cuba.

other than Spaniards who have published before the 11th April, 1899.

As to Cuba the situation was a little cleared by four ordinances published by the military governor during the period of the American occupation. The first ordinance (*a*) referred to deals with the rights of foreigners, and prescribes as follows (*b*):

1. Authors of foreign scientific, literary, and artistic works, their agents or representatives, shall enjoy in the island of Cuba the protection conferred by the Spanish Copyright Law of 10th January, 1879 (*c*), for the period during which these works are protected in the country of origin, provided it does not exceed that prescribed by the said law, and that the conditions required by it and by the Rules for its Execution (*d*) be fulfilled.

2. The general register provided by Art. 33 of the above-mentioned law shall be kept by the State and Government Department.

3. Foreign works must be entered in the general register. For this purpose a certificate issued by the competent authority of the country of origin of the work, duly legalized and establishing ownership in favour of the person seeking registration, should be presented.

4. The civil governors and municipal mayors shall not suspend the performance or recitation of foreign literary or musical works by virtue of Art. 63 of the Rules for Execution unless the person claiming such suspension establishes that he is the proprietor of the work, or the agent of the proprietor, by presenting the certificate of registration issued by the officer charged to keep the general register, or, in default, the agent's authority.

5. Registration of foreign works shall be gratuitous, and proprietors or their representatives can obtain, free of cost, certificates of registration.

By the second ordinance, dated 13th February, 1901, it is declared that for the purpose of registration of foreign copyrights it shall be sufficient to produce a document executed in the presence of a notary public or other public officer authorized to take oaths or declarations, provided the document contains, in full, the titles or certificates relating to the property delivered in the country of origin of the work, and

(*a*) Ordinance No. 119, dated 19th March, 1900.
(*b*) Translated from 'Le Droit d'Auteur,' 1903, p. 37.
(*c*) See *ante*, p. 623. (*d*) These are the rules referred to, *ante*, p. 629.

that the officer in whose presence the document is executed certifies that the original certificates have been produced to him.

The third ordinance, dated 13th June, 1901, deals with the rights of natives, and is as follows (*a*):

1. Rights of property in the matter of patents, copyrights, and trade marks duly acquired in Cuba, the Island of Pirios, and the Island of Guam, in accordance with the provisions of the Spanish law, and which existed on the 11th April, 1899, in these islands, or any of them shall subsist in their integrity for the entire periods for which they have been granted: the proprietors shall be protected and maintained in their said rights, provided always that the original or duly certified copy of the certificate of registration of the trade mark or copyright be deposited at the office of the governor of the island where protection is sought . . . and the original certificate or duly certified copy thereof shall be received and deposited at the office of the governor of the island, for all the purposes of this ordinance, without the necessity for any other certification.

2. The rights of property accorded by the United States in the matter of patents (including designs), those concerning trade marks, prints, and labels registered at the office of patents for the United States, and those concerning copyrights duly registered at the office of the Library of Congress, shall be maintained and protected by the civil government of the said islands, provided that a duly certified copy . . . of the certificate of registration of copyright . . . be deposited at the office of the governor of the island where protection is desired.

3. The person, firm, partnership, or corporation guilty of violating the rights protected by virtue of the observance of the provisions of this ordinance shall be liable to the civil and penal punishments created and established by the Spanish laws relative to the aforesaid matters which remain in force in the said islands.

4. The provisions of existing ordinances in conflict with this ordinance are revoked.

The fourth ordinance (dated 26th February, 1902) contains provisions as to the form of register prescribed by Art. 33 of the Spanish law and paragraph 3 of the military ordinance of 19th March, 1900.

Cuba entitled to benefit of Chace Act.

In spite of the proclamation of the independence of Cuba these military ordinances seem to be still in force, for on the 17th November, 1903, the President of the United States issued a proclamation declaring that Cuba was a country which

(*a*) Translated from the French translation in 'Le Droit d'Auteur,' 1903, p. 38.

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"permits to citizens of the United States the benefit of copyright on substantially the same basis" as to Cubans, and, as we have seen, there is no copyright law in force in Cuba unless it be found in these ordinances.

Porto Rico and the Philippines.

On the 12th April, 1900, the United States Congress passed a law for the government of Porto Rico, and, by virtue of this, apparently copyright in that country is regulated by the United States law on that subject, but in the Philippines there is apparently no copyright protection at the present time, that country being, presumably, still in a belligerent state.

TABLE SHOWING THE DURATION OF THE PRINCIPAL PERIOD OF COPYRIGHT PROTECTION IN THE VARIOUS FOREIGN COUNTRIES OF THE WORLD.

Austria	30 years from death of author.
Belgium	50 years from death of author.
Bolivia	*Id.*
Brazil	50 years from 1st January in year of publication.
Chili	5 years from death of author.
Columbia	80 years from death of author.
Denmark	50 years from death of author.
Egypt	(?) Perpetual.
Ecuador	50 years from death of author.
Finland	*Id.*
France	*Id.*
Greece	15 years from day of publication.
Guatemala	Perpetual.
Haiti	Life of author and his widow and 20 years more if there be children, 10 years if none.
Holland	50 years from publication or during the life of author, whichever shall be the longer.
Hungary	50 years from death of author.
Italy	1st period: life of author or 40 years from publication, whichever shall be the longer: 2nd period: 40 years (*a*).
Japan	30 years from death of author.
Luxembourg	50 years from death of author.
Mexico	Perpetual.
Monaco	50 years from death of author.
Norway	*Id.*
Peru	20 years from death of author.
Portugal	50 years from death of author.
Roumania	10 years from death of author.
Russia	50 years from death of author.
Salvador	25 years from death of author.
Spain	80 years from death of author.
Siam	7 years from death of author or 42 years from publication, whichever shall be the longer.
Sweden	50 years from death of author (10 years from death of author for works of art).
Switzerland	30 years from death of author.
Tunis	50 years from death of author.
Turkey	40 years from publication or during the life of author, whichever shall be the longer.
United States	28 years from registration, with a further period of 14 years on re-registration.
Venezuela	Perpetual.

(*a*) During the second period the copyright is not exclusive. The work may be reproduced by any one paying a percentage to the proprietor.

PART VII.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

Arrangements between authors and publishers.

A FEW remarks may, perhaps, be here advantageously offered on compacts, arrangements, and stipulations between authors and publishers, and we trust they may prove profitable both to the former and the latter.

In these days, when literature and commerce march in open array, and their pace is so rapid and great; when on the one hand a few authors write for fame, some for gain, and many for both; and on the other hand publishers regard their writings purely from a commercial point of view, estimating their worth (at least to them) by the amount of profit likely to accrue from the publication, two antagonistic parties frequently come into contact.

Authors who compose exclusively for fame are, on the assumption that they ever existed, rapidly becoming extinct, whilst those who write for gain are much on the increase. The spirit of the age is commerce, and almost every transaction of the present day is regarded in a commercial light (*a*).

Thus we have two parties in opposition: the one estimating the value of his work in proportion to his toil and labour in its composition, the other computing it in proportion as he conceives the public may become purchasers. The publisher could not undertake to requite or recompense the author according to the degree of exertion employed by him; for what amount of drudgery and toil may not be expended upon a work which would not even cover the expenses of printing and publication? Publishers invariably act like merchants,

(*a*) "Avarice," said Goldsmith, "is the passion of inferior natures; *money*, the pay of the common herd. The author who draws his quill merely to take a purse, no more deserves success than he who presents a pistol."—'An Inquiry into the Present State of Polite Learning,' chap x.

whose principle is to risk as little capital as possible, and to replace *that* with profit as early as feasible.

The reward due to the author.

The reward due to an author is thus justly referred to by Mr. Serjeant Talfourd: "We cannot describe the abstract question between genius and money, because there exist no common properties by which they can be tested, if we were dispensing an arbitrary reward; but the question how much the author ought to receive is easily answered: so much as his readers are delighted to pay him. When we say that he has obtained immense wealth by his writing, what do we assert, but that he has multiplied the sources of enjoyment to countless readers, and lightened thousands of else sad, or weary, or dissolute hours? The two propositions are identical, the proof of the one at once establishing the other. Why, then, should we grudge it any more than we would reckon against the soldier, not the pension or the grant, but the very prize-money which attests the splendour of his victories, and in the amount of his gains proves the extent of ours? Complaints have been made by one in the foremost rank in the opposition to this bill [a bill for the extension of copyright], the pioneer of the noble army of publishers, booksellers, printers, and bookbinders, who are arrayed against it, that in selecting the case of Sir Walter Scott as an instance in which the extension of copyright would be just, I had been singularly unfortunate, because that great writer received during the period of subsisting copyright an unprecedented revenue from the immediate sale of his works. But, sir, the question is not one of reward—it is one of justice. How would this gentleman approve of the application of a similar rule to his own honest gains? From small beginnings, this very publisher has, in the fair and honourable course of trade, I doubt not, acquired a splendid fortune, amassed by the sale of works, the property of the public—of works, whose authors have gone to their repose, from the fevers, the disappointments, and the jealousies which await a life of literary toil. Who grudges it to him? Who doubts his title to retain it? And yet this gentleman's fortune is all, every farthing of it, so much taken from the public, in the sense of the publishers' argument; it is all profits on books bought by that public, the accumulation of pence, which, if he had sold his books without profit, would have remained in the pockets of the buyers. On what principle is Mr. Tegg to retain what is denied to Sir Walter? Is it the claim of superior merit? Is it greater toil? Is it larger public service? His course, I doubt not, has been that of an honest, laborious tradesman;

but what has been its anxieties compared to the stupendous labour, the sharp agonies, of him whose deadly alliance with those very trades whose members oppose me now, and whose noble resolution to combine the severest integrity with the loftiest genius, brought him to a premature grave,—a grave which, by the operation of the law, extends its chillness even to the results of those labours, and despoils them of the living efficacy to assist those whom he has left to mourn him? Let any man contemplate that heroic struggle, of which the affecting record has just been completed, and turn from the sad spectacle of one who had once rejoiced in the rapid creation of a thousand characters flowing from his brain and stamped with individuality, for ever straining the fibres of the mind, till the exercise which was delight became torture, girding himself to the mighty task of achieving his deliverance from the load which pressed upon him, and with brave endeavour, but relaxing strength, returning to the toil, till his faculties give way, the pen falls from his hand on the unmarked paper, and the silent tears of half-conscious imbecility fall upon it—and to some prosperous bookseller in his counting-house, calculating the approach of the time (too swiftly accelerated) when he should be able to publish for his own gain, those works fatal to life; and then tell me, if we are to apportion the reward of the effort, where is the justice of the bookseller's claim? Had Sir Walter Scott been able to see, in the distance, an extension of his own right in his own productions, his estate and his heart had been set free; and the publishers and printers, who are our opponents now, would have been grateful to him for a continuation of labour and rewards which would have impelled and augmented their own" (*a*).

Contracts between authors and publishers should be in writing.

Contracts between authors and publishers are not, as in some countries, notably Germany, regulated by any special law, but their validity, construction, and enforcement depend upon the ordinary rules of law governing contracts relating to dealings with personal property. It is always advisable that they should be in writing, and if they are not to be performed within a year, writing is necessary under the Statute of Frauds (*b*).

(*a*) Speech in the Commons, April 25, 1838, 42 Parl. Deb. 560.

(*b*) But a contract by a printer to print, and find the paper for printing a number of copies of a work, is not a contract for the sale of goods within the 4th section of the Sale of Goods Act, 1893; and the printer consequently may recover the price in an action for work, labour, and materials, where the contract is a verbal one; *Clay* v. *Yates* (1856), 1 H. & N. 73. And a printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers; *Blake* v. *Nicholson* (1814), 3 M. & S. 167. But it seems that by the

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In *Sweet* v. *Lee* (*a*), it appeared that the agreement for the publication of a dictionary of legal practice was contained in a memorandum, which was signed with the initials of the publisher and of the author, and was to the effect that the latter should receive £80 a year for five years, and £60 a year for the rest of his life if he should live longer than five years. This was held to be void under the Statute of Frauds; because, being a memorandum of an agreement not to be performed within a year, no consideration was expressed on the face of it, and it was without any signature other than the initials of the parties. The plaintiff, therefore, was not entitled to damages claimed to have been sustained by the failure of the defendant to perform his agreement to prepare a new edition. Nor, although the contract was void, could the plaintiff, having paid for several years the sums mentioned in the memorandum, recover the money so paid on the ground of failure of consideration.

MSS. sent on approval.

Offer and acceptance are essential to every valid contract. If an author sends his manuscript to a publisher on approval, this is an offer by the author that the publisher shall have the right to publish on terms to be agreed upon, and if the latter publish without any agreement as to the author's remuneration, the law will imply a promise to pay a reasonable price for the work. What, short of actual publication, amounts to an acceptance of an author's manuscript will depend upon the circumstances of the case, but if the publisher retain the article and has it put into type and a proof sent for revision to the writer, the latter may generally treat this as an acceptance of his manuscript and sue the publisher for the price, even though the article is never, in fact, published (*b*).

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*c*), provided the work be one which, if published,

custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered; *Gillett* v. *Mawman*, 1 Taunt. (1808), 137, see also *Adlard* v. *Booth* (1837), 7 C. & P. 108. A contract to satisfy the Statute of Frauds need not appear from one document, but may be collected from any number of documents, provided they be sufficiently connected: see *Boydell* v. *Drummond* (1811), 11 East 142; *Mayor* v. *Pyne* (1825), 3 Bing. 285; *Pearce* v. *Gardner* (1897), 1 Q. B. 688.

(*a*) (1843), 3 Man. & Gr. 452.

(*b*) *Macdonald* v. *National Review*, Westminster County Court, 16th May, 1893; *Pall Mall Gazette*, 17th May, 1893.

(*c*) *Gale* v. *Leckie* (1817), 2 Stark, N. P. C. 107: 19 R. R. 692; the Court of Chancery, however, could not compel him; *Clarke* v. *Price* (1819), 2 Wills. C. C. 157.

would not be libellous (*a*), or would not subject the author to punishment (*b*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called 'The Juvenile Library,' and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*c*).

Payment to author's representative for part of work finished.

Where a work called the 'Elements of Mechanical Philosophy' was published in parts, the agreement between the author and publisher being that each part should be paid for when issued, and after the publication of a complete part the progress of the work was interrupted by the death of the author, it was held that the representatives of the deceased author were entitled to payment of the stipulated price of the published part (*d*).

No specific performance of agreement to write book.

A Court of Equity will not, however, decree specific performance of an agreement to write a book (*e*). It has no power to go so far, and were it capable of making such an order, there would be no means of enforcing it.

In the case of *Clarke* v. *Price* (*f*), the defendant, Mr. Price, entered into an agreement with the plaintiffs, dated the 27th of April, 1814, "to compose and write the cases in the Court of Exchequer, commencing with Easter Term, 1814, and to be

(*a*) *Lyne* v. *Sampson Low & Marston*, 'Times,' 17th Feb., 1873.

(*b*) *Gale* v. *Leckie*, *supra*, and see *Brook* v. *Wentworth* (1795), 3 Anstr. 881; *Cowan* v. *Milburn* (1867), L. R. 2 Ex. 230; 36 L. J. (Ex.) 124; 16 L. T. 290. A contract for the publication of a book which it is unlawful to publish is not valid. But where this defence is set up, and the work is not produced, and no evidence of its character is offered, the jury are not to pronounce that the book is obnoxious; *Gale* v. *Leckie*, *supra*. A printer cannot maintain an action against a publisher for money due for printing an obscene book; *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337. But where a printer, after printing part of a book, received the manuscript of the other part and found it to be libellous, it was held that he was not bound to print the libellous part, and was entitled to recover for what he had printed; *Clay* v. *Yates* (1856), 1 Hurl. & N. 73; *Lyne* v. *Sampson Low & Marston*, *supra*.

(*c*) *Planché* v. *Colburn* (1832), 5 Car. & Pay. 58; on ap. 8 Bing. 14.

(*d*) *Constable* v. *Robinson's Trustees*, 14 Fac. Dec. 166, 1st June, 1868. One judge, however, dissented, thinking the contract was one for the entire work, and that the object of partial payment was the accommodation of the author, and not any qualification of the original obligation. If a bookseller undertakes to publish a work in parts, and before the completion he dies, the subscriber has a claim upon the estate to complete the work, for otherwise these parts which he has purchased upon the faith of the work being completed are useless.

(*e*) Specific performance of an agreement for the sale of copyright (even though personal chattels, such as stereotype plates, printed sheets, &c., are included in the contract) will be decreed; *Thombleson* v. *Black* (1836), 1 Jur. 198.

(*f*) (1819), 2 Wills. C. C. 157.

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published periodically," on the terms of sharing the profits; and it was agreed that the plaintiffs should be at liberty to relinquish the undertaking if they should think it advisable. As the first and second volumes were published, the defendant, for certain considerations, assigned the copyright in them to the plaintiffs. Afterwards, in 1817, the terms of the arrangement were altered, and the following agreement was executed: "Memorandum, Mr. Price agrees with Messrs. Clarke to receive for his interest in the agreement for the Exchequer Reports, dated the 27th of April, 1814, commencing at the third volume, the sum of, &c. Mr. Price agrees to give any further assignment of the copyright and future interest to Messrs. Clarke at their expence." The defendant having subsequently entered into an agreement with other publishers, who were made defendants, to report the cases in the Exchequer; the bill was filed, praying to have a specific performance of the agreements of 1814 and 1817, by permitting the plaintiffs to print and publish the reports of cases in the Exchequer so long as he should continue to compose and write them, upon the terms of those agreements, and by executing an assignment of the copyright; and also praying an injunction. *Morris* v. *Colman* (*a*) was relied upon. Lord Eldon, C., dissolved an injunction which had been obtained *ex parte*, apparently assuming that the agreement bore the construction contended for by the plaintiffs. His lordship said: "The case of *Morris* v. *Colman* is essentially different from the present. In that case Morris, Colman, and other persons were engaged in a partnership in the Haymarket Theatre, which was to have continued for a very long period, as long, indeed, as the theatre should exist. Colman had entered into an agreement which I was very unwilling to enforce—not that he would write for the Haymarket Theatre, but that he would not write for any other theatre. The court could not compel him to write for the Haymarket Theatre, but it did the only thing in its power—it induced him indirectly to do one thing by prohibiting him from doing another. There was an express covenant on his part contained in the articles of partnership. But the terms of the prayer of this bill do not solve the difficulty, for if this contract is one which the court will not carry into execution, the court cannot indirectly enforce it by restraining Mr. Price from doing some other act. This is an agreement which expressly provides that Mr. Price shall write and compose reports of cases to be published by the plaintiffs. In

(*a*) (1812), 18 Ves. 137.

Morris v. *Colman* there was a decree directing the partnership to be carried on, it could not be put an end to, and it was the duty of the parties to interfere. But I have no jurisdiction to compel Mr. Price to write reports for the plaintiffs; I cannot, as in the other case, say that I will induce him to write for the plaintiffs by preventing him from writing for any other person, for that is not the nature of the agreement. The only means of enforcing the execution of this agreement would be to make an order compelling Mr. Price to write reports for the plaintiffs, which I have not the means of doing. If there be any remedy in this case, it is at law. If I cannot compel Mr. Price to remain in the Court of Exchequer for the purpose of taking notes, I can do nothing. I cannot indirectly, and for the purpose of compelling him to perform the agreement, compel him to do something which is merely incidental to the agreement. It is also quite clear that there is no mutuality in this agreement."

No specific performance of agreement to publish.

Likewise an author cannot, it is thought, have specific performance of an agreement by a publisher to publish the author's manuscript (*a*).

An author may bind himself not to write upon a particular subject.

But an author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, in the case quoted in *Clarke* v. *Price*, where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold (*b*).

(*a*) *Stevens* v. *Benning* (1854), 6 D. M. & G. 223. 229: *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. 499.

(*b*) *Morris* v. *Colman* (1812), 18 Ves. 137. In *Montague* v. *Flockton* (1873), L. R.

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But court will not interfere until there be an actual publication.

But in *Brooke* v. *Chitty* (*a*), where the defendant had undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's 'Justice of the Peace,' by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, when an author sells the copyright of a work (*b*) published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*c*).

If an author undertakes to compose a work and dies before completing it, his executors or administrators are discharged from the contract, for the undertaking was merely personal in its nature, and by the intervention of the contractor's death has become impossible to be performed (*d*). And if an author

16 Eq. 189, it was held that a contract between a manager of a theatre and an actor must be understood to be for the exclusive services of the latter during the period for which he had been engaged, though there was no express agreement that he should not act elsewhere. The case has been disapproved in *Whitwood Chemical Co.* v. *Hardman*, L. R. [1891], 2 Ch. 416, on the ground that there was no negative covenant, and cannot now be considered good law.

(*a*) 2 Cooper's Cases, 216; see *Brook* v. *Wentworth* (1795), 3 Anstr. 881.

(*b*) A contract for sale of a copyright is enforceable in equity; *Thombleson* v. *Black* (1837), 1 Jur. 198.

(*c*) *Barfield* v. *Nicholson* (1824), 2 Sim. & Stu. 1; 2 L. J. (Ch.) 90; 25 R. R. 144. But where, in an action by several plaintiffs for piracy of copyright, it appeared that the defendant, the author, had published the work in question pursuant to the conditions of a *cognovit* given by him to one of the plaintiffs and another person, in an action for not performing an agreement to write the work in question, it was held that this was a sufficient defence; *Sweet et al.* v. *Archbold* (1834), 10 Bing. R. 133; cited Curtis on Copy. 231.

(*d*) *Marshall* v. *Broadhurst* (1831), 1 Tyrrh. 349, by Lord Lyndhurst. So in *Cooke* v. *Coleraft* (1773), 2 W. Bl. 856, S. C. 3 Wils. 380, one Wm. Cooke, the plaintiff's intestate, being a newsman and entitled to receive every morning thirty copies of the 'Daily Advertiser,' assigned his right to the same, and all other his business of a newsman, to the defendant, and covenanted "that he the said Wm. Cooke should not thereafter exercise the business of a newsman, but should use his utmost endeavours to procure for the said defendant his customers in the said business," and in consideration of the premises, the defendant covenanted to pay 8*s.* per week to the said Wm. Cooke, his executors, and assigns, during the lives of said William Cooke and Ann his wife, and the survivor of them: Cooke died, and his wife took out administration and commenced the business of a newspaper vendor on her own account: the court held that the administratrix was not bound by the covenant, and grounded their judgment on the difference of expression in the two clauses, viz., that Cooke himself, without naming his executors, &c., should abstain from the business of a newsman, but that the payment was to be made to him, his executors, &c., and that this was now payable to the plaintiff not as wife but as administratrix of Wm. Cooke, and was assets for

becomes bankrupt his trustee has no power to compel him to complete the work (*a*).

Independent of agreement to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the court held that the author was at liberty to publish a continuation of the history which embraced part of the period and also much of the matter contained in the last of the four volumes (*b*).

'The Edinburgh Philosophical Journal.'

An arrangement was entered into between Dr. Brewster and Professor Jameson, on the one part, and an Edinburgh publishing firm on the other part, for the publication of a work to be edited by the former, called 'The Edinburgh Philosophical Journal,' the agreement to be binding for five years, or till the termination of the twentieth number of the journal. On the title-page the journal was stated to be "conducted by Dr. Brewster and Professor Jameson." After the twentieth number had appeared, Dr. Brewster, having differed with the firm, published a prospectus of "No. 1 of the 'New Series of the Edinburgh Journal,' conducted by Dr. Brewster," whereupon the firm presented a bill of suspension and interdict of a work under this title, on the ground that they were the proprietors of the original journal, the publication of which they intended to continue, and that the proposed work was an invasion of their property. The Lord Ordinary, on the ground that the copyright of the publication in question was the property of the complainers, passed the bill, and granted the interdict. The Court of Session recalled the interlocutor as deciding the question to be discussed on the passed bill; but at the same time remitted to pass the bill and continue the interdict (*c*).

'The London Journal.'

Where, in 1857, the defendant, being the proprietor of a weekly publication, 'The London Journal,' the price of which was 1*d.*, assigned his copyright and interest therein to the plaintiff for £24,000, and entered into a covenant with the plaintiff that he would not directly or indirectly, alone or in partnership with any other person or persons, engage himself or be concerned in bringing out or publishing any weekly periodical of a nature similar to 'The London Journal,' selling

the payment of his debts: besides, it would be very hard, the court said, to bar her from exercising a lawful occupation for her own livelihood in consequence of this personal covenant of her husband.

(*a*) *Gibson* v. *Carruthers*, 8 Beav. 343, 8 Jur. & W. 343.

(*b*) *Blackie & Co.* v. *Jameson*, May 26, 1827; 5 Sess. Cas. 719 (N.E.) 671.

(*c*) *Constable* v. *Brewster*, 3 Scotch Sess. Cass. 215.

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at 1*d.* per copy, or commit any act or default which might tend to lessen or diminish the sale or circulation of the said periodical, or the profit to be derived by the plaintiff from the future printing or publishing thereof, and in May 1859, the defendant issued an advertisement announcing the publication by him, on the 1st of June following, of a daily newspaper, to be called 'The Daily London Journal,' and to be sold at 1*d.*, the plaintiff obtained an injunction. The injunction was appealed against, but without effect, Sir J. L. Knight Bruce, L.J. (*dissentiente* Sir G. J. Turner, L.J.), confirming the order, upon the plaintiff undertaking to abide by any order the court might make as to damages, and to bring an action against the defendant within one week (*a*).

'London Society.'

So also in the case of *Clowes* v. *Hogg* (*b*), an injunction was applied for on behalf of Messrs. Clowes and Messrs. Wrigley, the proprietors of a magazine called 'London Society,' to restrain the defendant, Mr. James Hogg, the younger, from publishing a magazine under the name of 'English Society,' or with a cover only colourably differing from that used for the plaintiff's magazine. It was only sought to restrain the defendants from selling the Christmas number of his intended magazine with a cover similar to that used by the plaintiffs. 'London Society' was brought out by the defendant in its present form in 1863, but some time afterwards Messrs. Hogg, of whose firm the defendant was a member, became indebted to Messrs. Wrigley, paper makers, and a mortgage of the magazine was executed as part of an arrangement to pay the debt; the defendant at the same time entered into a covenant not at any time to do, or cause to be done, anything which might injure the said publication or decrease its value. The copyright in the magazine was subsequently assigned to the plaintiffs absolutely, subject to the before-mentioned mortgage. The magazine continued to be edited by the defendant, and was published at 217 Piccadilly. In May 1870, the plaintiffs, under the terms of their agreement with the defendant, gave him three months' notice of dismissal, and informed him that the magazine, 'London Society,' would in future be published by Messrs. Bentley, and would be edited by Mr. Blackburn. Upon this intimation the defendant proceeded to make arrangements for bringing out another magazine, entitled 'English Society,' and upon the termination of his notice of dismissal,

(*a*) *Ingram* v. *Stiff* (1859), 5 Jur. 917 : 33 L. T. 195.
(*b*) W. N. (1870), V.-C. M. 268 ; see *Hogg* v. *Kirby* (1803), 8 Ves. 115. And see *Sedon* v. *Senate*, cited 2 V. & B. 220.

he issued a circular in terms almost identical with the circular issued when the plaintiffs' magazine was first published, and which, it was alleged, contained expressions indicating that the defendant's magazine was a substitute for, or a continuation of, the plaintiff's magazine; and the defendant further threatened that he should endeavour to drive the rival publication out of the field. The defendant stated in his circular that he had ceased to be connected with 'London Society,' but proposed to carry into the new magazine whatever knowledge and spirit he had been able to impart into the old work, and announced that, with the aid of the well known masters of the pen and pencil with whom he had so long been associated, he proposed "to continue all those sketches of London society and those studies of English life for which we have won some reputation." The covers of the two magazines had a general resemblance in colour, but the defendant's cover exhibited the picture of a lady in the place where a coat of arms appeared upon the plaintiffs' magazine. Vice-Chancellor Malins said, if the question had arisen between two independent publishers, he should have had some difficulty in deciding that the cover of the defendant's magazine was so close an imitation of that of the plaintiffs' as to entitle him to an injunction; but as the defendant had entered into a covenant not to do anything to injure the magazine entitled 'London Society,' which covenant he thought was still in force so long as there was any money due upon the mortgage, and as the whole course of conduct pursued by the defendant evinced, in his opinion, an evident intention on the part of the defendant to injure the sale of the plaintiffs' magazine, and to lead the public to believe that his magazine was a continuation of, or a substitute for, the magazine of the plaintiffs', he had no hesitation in granting the injunction. But since there had been some amount of delay by the plaintiffs, in consequence of which the defendant had been induced, as he alleged, to expend a large sum of money in preparing the January number for publication, he thought it would be right to allow that number to appear in its intended form.

It sometimes happens that the original proprietor's name forms part of the title of a publication, as, for instance, 'Fraser's Magazine,' 'Walford's Antiquarian,' 'Lloyd's Weekly London Newspaper.' When a paper bearing the name of the original proprietor is assigned by him, the assignee acquires the right to use the original proprietor's name in connection with the paper, and any attempt to injure the property assigned will be restrained

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by the court. Thus, in *Ward* v. *Beeton* (*a*) the defendant had been the originator and proprietor of a work called 'Beeton's Christmas Annual.' In 1869 he sold this and his other works to Messrs. Ward, Lock and Tyler, and entered into a contract with that firm, by which, in return for a certain salary, he undertook to give all his services to that firm. He edited 'Beeton's Christmas Annual' for the firm for some years; but the latter, becoming discontented with the way the work was done, in 1874 put it into another writer's hands. Thereupon the defendant issued an advertisement announcing that he had nothing whatever to do with the 'Beeton's Christmas Annual' issued by the plaintiffs, and that he was preparing his usual annual, which, under the name of 'Jon Duan,' would be issued not by Messrs. Ward, Lock and Tyler, but by Messrs. Weldon and Co. Upon these facts an injunction was granted to restrain the defendant from publishing any such advertisements.

Breach by publisher of publishing agreement.

An author has a right to sue a publisher for breach by the latter of a publishing agreement. An author and publisher entered into an agreement under which the author was to edit the whole of the plays of Shakespeare (to be called the 'Temple Shakespeare'), and was to write an introduction, notes, and glossary for each play. The publisher was to pay the author a royalty, and the copyright was vested in the publisher. One of the clauses of the agreement was that in the event of a cheaper or other form of edition of any or either of the plays being thought advisable by the publisher it should form the subject of an agreement with the author on similar *pro rata* terms to those embodied in that agreement. Subsequently, the publisher produced a 'Temple Shakespeare' for schools, with notes, introduction, and glossary written by a person other than the author. The court held this to be a breach of the publishing agreement, and on the author bringing his action, whilst refusing an injunction restraining the publication of the school edition, ordered a reference to Chambers to assess the damages the plaintiff had suffered (*b*).

As to the alteration of an author's work by another.

When a publisher is the absolute owner of the copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections; and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. But such revision when done by another, cannot lawfully be represented as having been made by the

(*a*) (1875), L. R. 19 Eq. 207.
(*b*) *Dallanez* v. *Dent* (1903), 88 L. T. 358.

author of the original: and if the publisher issues a new edition under the author's name so incorrect as to be injurious to the author's reputation, he renders himself liable to an action for damages (*a*).

When, however, a portion of the work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation (*b*). This was decided in *Cox* v. *Cox* (*c*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand, thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was

(*a*) See *Archbold* v. *Sweet* (1832), 1 Moo. & Rob. 162; 5 Car. & Pay. 219.

(*b*) The name of the editor appearing upon the title-page forms no part of the title; and the Master of the Rolls refused to restrain by injunction the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent; *Crookes* v. *Petter* (1860), 6 Jur. 1131; 3 L. T. 225.

(*c*) (1856). 11 Hare, 118.

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resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have stated what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims £60 as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*a*), the possible effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the court to consider when the question of a right of property also arises. . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form? How far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire: and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question

(*a*) *Clarke* v. *Freeman* (1850), 11 Beav. 112.

might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no foundation in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form.

The plaintiff would have had this right by analogy to the principle that a publisher acquiring from an author a right to publish a treatise in a particular work, such as in the 'Encyclopædia Britannica,' would not be entitled to make the publication in another work not embraced in the contract, nor to publish generally beyond his licence (*a*). But it must be borne in mind that the opportunity of correcting the errors by separate publication could not have arrived until the expiration of twenty-eight years from the first publication.

Where no agreement purchaser of copyright need not publish.

We have already considered (*b*) how far and to what extent editors of newspapers are entitled to make alterations in communications made to them and articles sent for insertion. The same principle is applicable in the case of authors and publishers. But it may be well to mention here that it is apprehended that where the copyright in a work is sold outright, and there is no express agreement to publish the same, the proprietor may decline to publish, notwithstanding that the author may fail by reason of this to acquire additional reputation. The author should have made the publication by the purchaser part of the agreement had he considered this material to his interests.

(*a*) *Stewart* v. *Black*, 9 Sess. Cass. 3nd Series, 1026; cited Phillips on Copy. 178. As to bookseller's lien on the copyright for his disbursements, see *Brook* v *Wentworth* (1795), 3 Anstr. 881.

(*b*) Chapter Newspapers, *ante*, p. 252.

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To what extent proprietor of periodical may delay publication of articles.

It is more questionable, however, to what extent the proprietor of a periodical could delay publication where he had acquired the copyright under the 18th section of the Copyright Act, 1842, for here, as the duration of right in the owner of the periodical is limited, and the twenty-eight years would run from the time of publication, the author might argue that, as by the action of the owner of the periodical, his right to separate publication was indefinitely postponed, there was an implied understanding that the publication should be forthwith.

Alterations in work by assignee of owner of copyright.

In an important case recently tried, the subject as to alteration of a work by the assignee of a publisher, and the consequent effect on the reputation of the author, was considered. Mr. Sidney Lee sought to restrain Mr. Gibbings from publishing as a new and complete work of the author, with the date 1892 on the title-page, mutilated copies of 'The Life of Lord Herbert of Cherburg,' prepared by the author for Mr. Nimmo in 1886, and issued by him in that year. The court declined to interfere on an interlocutory application, and intimated that Mr. Lee's only remedy was for a libel against Mr. Gibbings. It seems that Mr. Nimmo having sold 395 copies to the public, sold the rest of the issue to Mr. Gibbings as a remainder, which Mr. Gibbings issued as a new book, with the date 1892, omitting the introduction and the index.

There can be no doubt that such an issue was calculated to damage the reputation of the author, for apart from the question of mutilation, no opportunity was afforded him of introducing matters having reference to the life in question which might have come to his knowledge since the appearance of the first issue. Mr. Justice Kekewich, in his judgment, said: "The legal side of the case is one of considerable interest, and not at all free from difficulty. I regard the defendant for this purpose as the owner of the copyright of this work. He is not, I am aware, the owner of the copyright, but he has purchased the unpublished sheets of the plaintiff's work, and as regards these unpublished sheets he stands in Mr. Nimmo's place, and is the owner of the copyright (*a*). He has Mr. Nimmo's assent to their publication. He has even Mr. Nimmo's assent to the publication in the present form, and he, therefore, though having no right to multiply copies in the sense of printing further copies and publishing anything else but these sheets, can deal with these sheets as he pleases, provided he gives the

(*a*) This, we submit with deference, is too broad a definition of Mr. Gibbings' rights.

plaintiff no cause to complain. He thinks fit, that is to say, he finds it convenient to his trade, to publish the plaintiff's work in a mutilated form. The word 'mutilated' may or may not imply something in derogation of the work, or of the defendant's manipulation of it; but strictly speaking the form is mutilated. The index is left out. I do not myself attribute very great importance to that in such a work as this, but I only speak for myself in saying that. There are other parts left out, including the introduction, and I should certainly say that the omission of the introduction to such a work as this was very nearly leaving out the principal part of the work. Then the date is altered, so as to give the impression that it is a new work. I am told that is not so; that nobody would suppose that was a work published in 1892 because the figures '1892' are on the title-page. I suppose that there are some people who would regard 1892 as meaning nothing. I confess to be amongst them who have regarded it as meaning that the work was published in 1892 and not in 1886; but that is a question of injury to the plaintiff to which I will come presently, and not otherwise a mutilation of the plaintiff's work. The omission of the introduction does seem to me to be a very cogent instance of mutilation. Is the defendant entitled to do that? There is no law compelling a man to publish the whole of the work because he has the copyright in the whole. Nor can he be prevented from publishing extracts from the work. Whether it is right for him to publish extracts without saying they are extracts, or whether he can publish a work in a mutilated form without indicating in the least that there has been that mutilation, is a question, to my mind, of some difficulty.

"The question resolves itself into this: Does he thereby injure the author's reputation? For that, what is the author's remedy at law? His remedy in law is, I think, undoubtedly libel or nothing. Injury to reputation is the foundation of the remedy in an action of libel. It is what you have to prove in order to get your damages, and if one endeavoured, which I am not intending to do, to frame the innuendo in an action of libel by the plaintiff against the defendant, it would necessarily point to the injury of the reputation of the author hereby informing the public that this mutilated work was really the work of the plaintiff, whereas, in fact, his work was something far superior, and that this would be discreditable to him. That would be necessarily the general line of complaint.

"It comes, therefore, to a question on this part of the case

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whether I ought to grant an injunction now to restrain a libel before that question has been before a jury, which is the avowedly proper tribunal for the purpose of determining whether a libel exists or not. The jurisdiction of the court to restrain a libel is undoubted. It has been affirmed over and over again, even in those cases in which the court has refused to grant an injunction, in particular the last case of *Bonnard* v. *Perryman* (*a*). Of late years there has been no such thing as an injunction to restrain a libel except in the recent case, where Mr. Justice Chitty distinguished trade libels from other libels, and granted an injunction (*b*), a decision with which, within the last week or two, I have had occasion to express my entire concurrence (*c*). But with that exception, as far as I know, the court has not of late granted an injunction to restrain a libel before the point has been submitted to a jury, in other words, an interlocutory application.

"Now ought this to be an exceptional case? I see no reason for making an exception in favour of a case such as this. The balance of convenience does not seem to me to point in favour of granting an injunction, because, though the sale of the work will no doubt go on, and though if it goes on it is injurious to the plaintiff's reputation—the injury will be continued—yet the injury must to a great extent be done by the mere publication, and after all success in the ultimate result would be quite satisfactory to the plaintiff. I mean, if it were eventually determined that the plaintiff was right and could sustain an action of libel against the defendant by reason of this publication, then, not by the damages awarded, but by the mere verdict of the jury, he would have, I will not say rehabilitated, but maintained his reputation at the level at which it before existed. It cannot be suggested that the mere sale of a few copies more or less would place him in any worse position if eventually he succeeded, and of course, if he did not, then he has no reason to complain.

"Now, on the balance of convenience, I think I ought not to grant an injunction, especially it being of course understood that I express no opinion whether it is a libel or not. That is really the reason why the court in these cases does not grant an injunction, because if it granted an injunction, or even if it refused it on any other ground than the one I have mentioned, the court would be obliged to express an opinion, that

(*a*) [1891], 2 Ch. 269.
(*b*) *Collard* v. *Marshall* [1892], 1 Ch. 571.
(*c*) *Pink* v. *Federation of Trades* (1892), 67 L. T. 258.

the court ought not to express an opinion on a matter that is to be left to a jury.

"But the plaintiff's case has been put by Mr. Renshaw on another ground, which strikes me as extremely deserving of attention, though I do not think I ought to grant an injunction on that ground at the present moment. He says this is like the case of *Clarke* v. *Freeman* (*a*), and *Clarke* v. *Freeman* may be considered for this purpose as decided quite differently from the way in which it was decided. In that I follow him. I do not think that after the observations of Vice-Chancellor Malins, Lord Cairns, and Lord Selborne on that case, I ought to hesitate to regard it as really erroneously decided, and I do not think that, having regard to Lord Cairns's observations on p. 310 of the second Chancery Appeals in the case of *Maxwell* v. *Hogg* (*b*), I ought to doubt what the proper decision should have been in *Clarke* v. *Freeman*, or on what ground that proper decision would have been rested, because he says—distinctly speaking, be it remembered—in the Court of Appeal: 'It always appeared to me that *Clarke* v. *Freeman* might have been decided in favour of the plaintiff on the ground that he had a property in his own name.' The question of whether a libel was a fit subject for an injunction either on motion or at the trial was not discussed in *Clarke* v. *Freeman*. It is not discussed by Lord Cairns, it is not discussed by Lord Selborne, and it is not discussed by Vice-Chancellor Malins, but they disapprove of the decision, and Lord Cairns says because the plaintiff had a property in his own name, the name was invaded by the actions of the defendant, and the plaintiff could therefore restrain the defendant from doing what he did on that ground. That is entirely independent of libel.

"Now, can I decide this case on that ground in favour of the plaintiff? I think not, and I think not because when you come to test that argument, according to my present opinion, you really come back again to the question of libel in this case, though you would not have done so in *Clarke* v. *Freeman*. The plaintiff's case on this part of it is, 'The defendant is publishing as my own what is not my own; that is to say, I am the author of an entire book, the defendant is publishing only part of it, and such part that really he is not publishing my work at all; he is bringing out what I never sanctioned as my work, and which cannot be fairly represented as my work, and therefore I complain of him using my name in connection

(*a*) (1850), 11 Beav. 112.
(*b*) (1867), 2 Ch. App. 307.

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with a book that is not mine.' It comes back to this: Is the book the plaintiff's or not? It is avowedly only part of it; but is it such a substantial part of it that it may be fairly called the plaintiff's? It is so unless the mutilations are such as to give the plaintiff a right of action for libel. So that, try it as you will, it comes back to the same point, and I think, therefore, I should be doing wrong in seizing hold of the doctrine, not of *Clarke* v. *Freeman*, but which ought to have been supported in *Clarke* v. *Freeman*, to give the plaintiff relief which ought, on the other hand, to be denied him, because he is really bringing an action of libel. I therefore, on those grounds, must refuse the motion, without expressing any opinion whether what has been done is injurious to the plaintiff's reputation or not.

"This is really the whole question in the case. If the case is tried out, there is nothing else to be tried, and therefore the proper way to deal with the costs is to make the costs of both parties costs in the action" (*a*).

Where agreement is for a specified number of copies.

Where the agreement is for the exclusive publication of a specified number of copies, that number only can be printed and sold, and until their sale the author cannot revoke the authority given to the publishers, or himself publish the work.

An agreement that the publisher shall publish a second edition, if demanded by the public, and print as many copies as they can sell, gives them the right, when such demand arises, to publish and sell as many copies as can properly be considered to belong to that edition, and to prevent the author or any other person from publishing until such copies shall be sold (*b*).

Agreements as to style of publication.

The publisher is bound to observe the terms of the contract between himself and the author as to the manner and style of the publication, and the price at which it shall be issued to the public, but if the price at which the work is to be sold be not fixed by the agreement, or otherwise arranged by the author and publisher, the latter is the proper person to determine the same. At the same time, he would not be permitted to fix upon a style, or sell at a price, which would be clearly injurious either to the literary reputation or the pecuniary interests of the author without his consent.

When neither the time during which the publication is to

(*a*) Verbatim report in 'The Athenæum' of Aug. 13, 1892; reported also 67 L. T. 263. With great deference we consider the decision in *Lee* v. *Gibbings* to be open to grave objections. In *Drummond* v. *Artemus* (1894), 60 Fed. Rep. (Amer.) 339, the American Courts restrained the publication of a garbled edition of Prof. Drummond's lectures, though the lectures had no copyright in America.

(*b*) *Pulte* v. *Derby*, 5 McLean (Amer.) 328.

last, nor the number of editions or copies to be published, is specified, the publisher is not bound to publish more than the first edition; and the author, by giving proper notice, may end the contract and prevent the publication of any further editions (*a*). But the publisher is at liberty to continue publishing successive editions on the terms of the contract until the receipt of such notice; and the author is not entitled to restrain the publication or sale of any edition on which the publisher has incurred expense before receiving notice to end the agreement (*b*).

After parting with copyright, author cannot reproduce matter in any other book.

After an author has parted with the copyright in a book, he is not at liberty to reproduce substantially the same matter in another work. Even in the absence of any special agreement, the second publication would be an infringement of the copyright in the first (*c*).

A writer agreed with a publisher to edit a translation of Montaigne, adding notes and a biographical sketch of the author, for a particular sum, which was to be increased by other sums as further editions should be published. It was intended that the publisher should have the sole right of multiplying copies of the work, but there was no assignment to him of the copyright. After the publisher's death, his widow and executrix, with the author's knowledge and assent, registered the copyright in her own name. On the publication of a fresh edition, the widow paid the author money, and gave him copies of the work on the same terms as were contained in the agreement made with her husband in his lifetime, and on three occasions, when the author claimed remuneration on those terms, she did not repudiate all liability, but disputed merely the amount. This was held to be evidence from which a jury might infer an agreement on the part of the widow to remunerate the author on the same scale as in the agreement with her husband, in consideration of the author assenting to her registering the copyright in her own name (*d*).

Warranty on sale of copyright.

Where the executor and son of a deceased author, in reply to an offer from a publishing house relating to one of his father's works, replied that he would be happy to treat with them "respecting the copyright" in it; and, in another letter,

(*a*) *Reade* v. *Bentley* (1857), 3 K. & J. 271; 4 Id. 656; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. In this last case it was held that no agreement could be implied on the part of the author not to bring out a second edition until all the first edition was sold.

(*b*) *Reade* v. *Bentley*, *supra*.

(*c*) *Rooney* v. *Kelly*, 14 Ir. Law Rep. (N.S.) 158; *Colburn* v. *Simms* (1843), 2 Hare, 543.

(*d*) *Hazlett* v. *Templemore* (1866), 13 L. T. 593.

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Copyright of articles in the proprietor of periodicals.

A person may be the proprietor of a copyright in the separate parts of a periodical simply by reason of his employment of the writers (*b*). It appears but reasonable, that where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, to imply that the copyright of the articles so expressly written for such periodical, and paid for by the proprietors and publishers, shall be the property of such proprietors and publishers; otherwise the author the day after his article had been published by the persons for whom he contracted to write it, might republish it in a separate form, or in another serial, and there would be no correspondent benefit to the original publishers for the payment they had made (*c*).

How far proprietor of periodical can interfere with editor.

Without determining the extent to which the owners of the copyright in a journal are justified in interfering with the editor in his editorial capacity, where the remuneration of the editor depends upon the success of the journal, the court refused to restrain the proprietors from altering articles proposed to be inserted by the editor, or inserting others contrary to his wish, it being the province of a jury to determine the amount of damage, if any, which the editor sustained by reason of the conduct of the proprietors (*d*).

Where an editor and publishers have formed a partnership for the publication of a magazine of which they are joint owners, the editor, having taken steps to dissolve the partnership, with the view of establishing another periodical, is at liberty to advertise the discontinuance of the first magazine.

(*a*) *Sims* v. *Marryatt* (1851), 17 Q. B. 281.

(*b*) *Lawrence and Bullen* v. *Aflalo* (1904), A. C. 17; but see Jervis, C.J., in *Shepherd* v. *Conquest* (1856), 25 L. J. (C.P.) 127; 17 C. B. 427.

(*c*) Where publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine,—*Semble*, the copyright in such articles is not vested in the publishers under 5 & 6 Vict. c. 45, s. 18: *Brown* v. *Cooke* (1846), 11 Jur. 77; 16 L. J. Ch. 140. Printers have a lien on undelivered copies of a work printed by them, for the balance due in respect of the whole work: *Blake* v. *Nicholson* (1814), 3 M. & S. 167.

(*d*) *Crookes* v. *Petter* (1860), 6 Jur. 1131; 3 L. T. 225.

The title of the latter and the right to publish it are partnership property, and may be sold for the benefit of the partners. But the editor may advertise its discontinuance by himself, or as far as he is concerned (*a*).

Construction of agreements between authors and publishers.

Should an author, in consideration of a sum of money paid to him, agree that certain persons shall have the sole power of printing, reprinting, and publishing a particular work for all time, that would be parting with the copyright; but if the agreement be that the publishers, performing certain conditions on their part, should, so long as they perform such conditions, have the right of printing and publishing the book, that is a very different agreement.

In the case of *Sweet* v. *Cater* (*b*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publishor was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not under this agreement the *proprietor of the copyright* within the meaning of the statute (54 Geo. III. c. 156, s. 4), but a mere licensee to sell a given number of copies. The court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted. It is to be regretted that the court did not advert to the question whether the words of purchase of the agreement—viz. that the publisher was to pay for *the edition* [illegible] pendently of the implied contract on the [illegible] author not to do any act which might interfere with the sale, an equitable copyright in the work.

Agreements for division of profits, personal.

Where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon the condition that the author should prepare it all before a certain day, and should correct the press, and that the publishers should direct the mode of printing,

(*a*) *Bradbury* v. *Dickens* (1859), 27 Beav. 53; *Hogg* v. *Kirby* (1803), 8 Ves. 215.
(*b*) (1841), 5 Jur. 68; 11 Sim. 572.

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and pay all the expenses and take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be required, the author should prepare the same, and the publishers should print and publish it on the same conditions; and that, if all the copies of any edition should not be sold in five years from the date of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract by the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*a*).

The benefit of right to publish not transferable by publisher.

The case referred to is the leading case of *Stevens* v. *Benning*, in which the original contract was between Mr. William Forsyth and Messrs. Saunders and Benning, for the publication of a treatise on the 'Law relating to Compositions with Creditors.' After the issue of the second edition one of the parties became bankrupt, and there was an assignment by his assignees and a partner of the bankrupt to Messrs. Stevens and Norton, who then endeavoured to restrain the issue of a third edition by William Granger Benning for the author.

"The principle question then is," said Vice-Chancellor Wood, "whether this agreement is a personal engagement or not. It would be difficult for me to say that, in a contract of this kind, the author is utterly indifferent into whose hands his interests under such an engagement are to be entrusted.

"It is not merely a question of his literary interests, but certain publishers undertaking to incur the expenses of bringing out the work, and fixing the price, the author is to have a share of the profits; and they are to decide in what shape the book is to come out, and at what price it is to be sold, and are to account with him. I must say, that, in my opinion, these are peculiarly personal considerations; and that this contract bears the impress of being a personal contract in all these respects. It could not be a matter of indifference to Mr. Forsyth that the assignees in bankruptcy of Mr. Benning should be at liberty to transfer the future right of fixing the price of this and subsequent editions, and the right to call upon him to fulfil his duty of preparing a new edition, and the risk which might be incurred in conducting it, and the other benefits

(*a*) *Stevens* v. *Benning* (1854), 1 K. & J. 168, affirmed, 6 D. M. & G. 223: 1 Jur. (N.S.) 74; *Reade* v. *Bentley* (1857), 3 K. & J. 271; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; 48 L. J. (Ch.) 673. See *Pulte* v. *Derby*, 5 McLean (Amer.) 332.

and obligations of the agreement, to any one they might think proper; possibly to some one not even carrying on the trade of a bookseller, as might happen in case of an absolute sale to the best bidder. Regarding the agreement as a contract for the purchase of a limited right, according to the view of the Vice-Chancellor of England in *Sweet* v. *Cater* (*a*), it is still impossible that it should be indifferent to Mr. Forsyth that it should pass from a respectable firm in London to booksellers residing in a remote part of the country, or to other persons unable to fulfil the engagements entered into with him. The contract, therefore, is one which involves personal considerations; and framed as it is, I must regard it as a special kind of agency, under which the agents were bound to sell, and to the risk of there being no profits upon themselves" (*b*).

Nor whether author receives a royalty.

For similar reasons to those assigned above, a contract whereby the author is to receive a royalty on the copies sold is not transferable by the publishers, but it seems doubtful whether, where a definite sum has been agreed upon for the privilege of publication, the benefit of the contract could not be assigned by the publisher, for though the literary interests of the author might possibly be affected to some extent, yet the change of publishers could not, at least directly, cause him any pecuniary injury.

Otherwise where he receives a sum down.

Bankruptcy of publisher.

In the event of the publisher becoming bankrupt, the copyright in any work belonging to the bankrupt will pass to his trustee in bankruptcy; and should the publisher be a joint-stock company, upon the liquidation of such company any copyrights will vest in the liquidator (*c*).

If the contract between the author and the publisher, however, be one which is not assignable on the part of the publisher, if, in short, it be one involving personal skill on the part of the publisher, it is possible his position might be regarded so far in the light of a trustee, as to bring the copyright under the category of trust estates which would not pass to the trustee in bankruptcy. It must be remembered that if the author is not paid the consideration for the sale of the copyright down, but the same is payable by instalments, then, on the bankruptcy of the publisher, the author would merely be entitled to a dividend on his debt, while the copyright sold might possibly be earning dividends for the payment of other creditors of the publisher.

(*a*) (1841), 11 Sim. 579.
(*b*) 1 Kay & J. 174; on appeal, 6 De G. M. & G. 223.
(*c*) *Griffith* v. *Tower Publishing Co.* (1897), 1 Ch. 21.

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To meet this contingency it has been suggested that where the consideration for the sale of the copyright is not paid down, or where a royalty only is payable to the author, there should be an agreement between the author and publisher by which, in the event of the bankruptcy of the latter, the copyright should revert to the author until the whole of the purchase-money has been paid, or the royalties secured. It would seem, however, in the one case, to be the better course not to assign the copyright until full payment of the purchase-money, where this is payable by instalments; and the other case does not seem to require any special provision, for, assuming the interest to be such as would pass to the trustee in bankruptcy, still he could not stand in any better position in relation to the author than the publisher did, and if sales were made would certainly be bound to pay over the royalties according to the agreement with the author.

Stevens v. *Benning* followed.

This case of *Stevens* v. *Benning* was followed by Lord (then Mr.) Justice Fry in the case of *Hole* v. *Bradbury* (*a*). The plaintiffs alleged themselves to be the owners of the copyright of a book called 'A Little Tour in Ireland,' and they brought the action to restrain the defendants, who were publishers, from publishing the book. The copyright had not been assigned to the defendants by writing or by entry at Stationers' Hall. The book was composed by two joint authors, one of whom was a plaintiff, and the other was dead. The personal representative of the deceased joint author was the other plaintiff. The defendants alleged that before the first publication of the book, which was first published by a firm to whose business the defendants had succeeded, an arrangement had been made between that firm and the deceased joint author, acting on behalf of himself and his co-author, that the firm should engrave the illustrations and print and publish the book. If there were a loss from the publication, the firm were to bear the whole of it. If there were a profit they were to pay half of it to the plaintiff and the deceased joint author. The profits were to be ascertained after debiting the costs of the engraving, printing, and publication. The defendants alleged that this was an agreement for the sale of the copyright, and that they, as successors of the original firm, were entitled by assignment from them to the benefit of the agreement. No member of the original firm was a partner in the defendants' firm. The defendants had in their possession the blocks from which the illustrations to the first edition of the

(*a*) (1879), 12 Ch. Div. 886.

book had been printed, the drawings on the block having been made by the deceased joint author himself. It was held that the alleged agreement was a mere publishing agreement, and did not amount to a sale of the copyright, and that the benefit of the agreement was not assignable without the consent of the authors. Consequently, the defendants could derive no benefit from the agreement, and the injunction must be granted. And, as by the terms of the agreement, the cost of engraving was to be paid out of the gross profits, the blocks were not the property of the defendants, and must be delivered up to the plaintiffs.

Application of principle to case of limited company.

These cases have been recently followed by Lord (then Mr.) Justice Stirling in the case of *Griffith* v. *Tower Publishing Company & Moncrieff* (*a*). The plaintiff was the author of a story called 'The Angel of the Revolution,' and he entered into a profit-sharing agreement with the Tower Publishing Company —a limited company—whereby the latter were to have the sole right of producing the work in volume form, the copyright to remain with the plaintiff. The company became insolvent, and in a debenture holders' action the defendant Moncrieff was appointed receiver and manager of all the property and assets of the company comprised in or subject to a debenture issued by them, including the plaintiff's works. Moncrieff having informed the plaintiff of his intention to sell the plaintiff's books together with all the company's rights under the above-mentioned agreement to another firm, not approved of by the plaintiff, the latter obtained an injunction restraining the assignment, the court holding that no distinction could be drawn between contracts with a company and with an individual, for confidence might be reposed in the former equally with the latter.

Agreement for division of profits a joint adventure terminable by notice.

An agreement similar to that in *Stevens* v. *Benning*, and without specifying a particular edition, constitutes a joint adventure between the parties (*b*), which either party is at liberty to terminate upon notice after the publication of a given edition, if at the date of such notice no fresh expense has been incurred by the party to whom such notice be given.

In the case of *Reade* v. *Bentley*, by a memorandum of agreement made in November 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his

(*a*) (1897), 1 Ch. 21.

(*b*) Joint owners of a copyright may make a contract between themselves as to the printing and publishing of the work, and neither will be permitted to set up against the other his original rights as a joint owner in violation of such contract; *Gould* v. *Banks*, 8 Wend. (Amer.) 568.

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own expense and risk, a work entitled 'Peg Woffington,' of which the former was the author; and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant. Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled 'Christie Johnstone,' of which the plaintiff was also the author; and they signed for that purpose a memorandum of agreement, which, except as to the date and the title of the work, was in the same words as the former. Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to prevent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than one of simple agency."

Sir W. Page Wood, in passing judgment, made the following observations: "Agreements between authors and publishers assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties. Again, where, as in *Sweet* v. *Cater* (*a*), the author assigns a particular edition, the rights of himself and the publisher are equally clear; and although in that case the

(*a*) (1841), 5 Jur. 68; 11 Sim.

point did not require determination, the court observed, and justly observed, that, where an author has sold an edition of a given number of copies to one publisher, he is not at liberty, before they are sold, to publish the same work himself or through another publisher, in such a manner as to compete with the edition he has sold, but is bound to afford to the purchaser a full opportunity of realizing the benefit of his contract. The case before me, like that of *Stevens* v. *Benning* (*a*), is of an intermediate description. Here, as there, the author does not sell, or purport to sell, any interest whatever in the copyright. It was contended, and very strongly, in *Stevens* v. *Benning*, that the author had done so; but I held that he had not, and my view was affirmed by the Lords Justices. Here also, as there, the publisher was to publish at his own risk. Nevertheless, in *Stevens* v. *Benning*, the agreement contained other provisions, considerably more definite than any in this case. It pointed to a series of editions to be published for the author by the same publisher, as to every one of which the author himself stipulated, as part of the contract, that he would assist in the publication. Here the agreement is simply that the publisher shall publish the work at his own expense and risk, and, after deducting all the expenses specified in the memorandum and an allowance of £10 per cent., the profits remaining of every edition that shall be printed of the work are to be divided into two equal parts, one of which is to be paid to the author, and the other to the publisher.

"It was contended for the defendant that if the effect of the agreement was not an assignment of the copyright (which it is now clearly decided that it could not be), it resulted in a joint adventure, in which the defendant was to have a licence to publish the work; and that, from the nature of the case, and by the terms of the agreement, that licence was irrevocable. In *Stevens* v. *Benning* I considered the agreement must be regarded as creating, to a certain extent, a joint adventure, and Lord Justice Knight Bruce adopted the same view. He says, it must be observed, that such interest, if any, in the copyright of the author's work as the other parties to the agreement acquired under it, they acquired, not exclusively of the author, 'but by way of joint adventure with him, or of partnership with him, in respect and for the objects of which he undertook the fulfilment by himself personally of certain duties to them, and they undertook the fulfilment by themselves personally of certain duties to him' (*b*). Community of risk does not appear

(*a*) (1854), 1 K. & J. 168; 6 D. M. & G. 223.

(*b*) 6 D. M. & G. 223, 229.

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to me to be by our law, any more than it was by the civil law, essential to constitute a partnership; one partner being at liberty to contract with another that he will take all the losses of the concern upon himself. Lord Justice Turner looked upon the agreement in *Stevens* v. *Benning* in the double light of a licence and a partnership, speaking, however, less decidedly as to its being a partnership. He says: 'Next, if there was a partnership, then, if the agreement does not affect the copyright, the partnership was not in the copyright, but in the copies printed under the licence contained in the agreement' (*a*)—viewing it, therefore, as a licence for the publication of the work, and then a joint adventure between the author and publisher in the copies so to be published. If that were the effect of the agreement in the present case, the question would still remain, whether the licence be irrevocable.

"The plaintiff does not attempt to interfere with the publication of an edition which the defendant had commenced, and incurred expense in preparing for publication, before he exercised the option of determining the agreement. His claim is limited to editions about which no such expense had been incurred by the defendant; and his argument is, that, unless he has a right to determine the agreement as to all such editions, the consequence will be, that, during the whole of the defendant's life, he may be under an obligation to the defendant, while the defendant will be under no reciprocal obligation to him. It is true that, according to *Stevens* v. *Benning*, a licence like the present would, I apprehend, be restricted to the defendant personally, and would not extend to his executors, or to any future partner or assignee; but if the defendant's construction be correct, it follows that, so long as he lives and is willing to continue publishing fresh editions of the work, so long, according to the doctrine in *Sweet* v. *Cater*, the plaintiff will be precluded from asserting a right to publish any competing edition. The defendant could compel the plaintiff to abstain from publishing a single copy of the work, so long as he expressed his readiness to continue publishing. But the plaintiff has no reciprocal power. He could never compel the defendant to publish more than a single edition of the work. His powers are limited to what the contract gives him; and, according to the contract, when the defendant has published a single edition the contract on his part is fulfilled. That is a position of considerable hardship for an author, and one which ought to be clearly shown, upon the face of a contract, to have

(*a*) 6 D. M. & G. 231.

been contemplated by the parties who entered into it . . . In the present case, no new expense has been incurred by the defendant, either in printing, advertising, or otherwise, as regards 'Peg Woffington,' since the publication of the second edition, and, as regards 'Christie Johnstone,' since the publication of the fourth edition; and that being, as I have already intimated, the true test in construing the agreement, it appears to me, that, when those editions were published, the period had arrived at which the parties intended a division of profits to take place, and at which the plaintiff became entitled to terminate his agreement with the defendant. This is the only conclusion at which I can arrive, after a very careful consideration of the contracts. But it is much to be regretted that contracts should be framed with such uncertainty, when it would have been so easy to make them certain" (*a*).

Agreement not to sell under a certain price.

The defendant, having printed a book, sold 300 copies of it to the plaintiff, a bookseller, at 40*s.* a copy, and agreed by letter "only to sell to others at 48*s.* in quires, and single copies at 50*s.* until the plaintiff's 300 copies were sold, or the plaintiff should consent." The letter also contained these words: "I do not expect you to sell under 48*s.* and 50*s.*, but do as you like." The plaintiff, when he had sold part of the 300 copies, went into partnership with C. and transferred all his stock at the cost price; and also sold some copies at 45*s.* and 46*s.* An action being afterwards brought by him against the defendant for selling copies under the stipulated price, it was contended on behalf of the defendant, first, that the plaintiff was bound by implication not to sell the work himself under the price at which the defendant was to sell, and that his selling at 45*s.* and 46*s.* was an answer to the action, as being against the good faith and honour of the contract, inasmuch as it would tend to prevent the defendant from selling his copies at all; secondly, that the contract was put an end to by the plaintiff going into partnership with C., and transferring his interest to the firm at 40*s.* a copy, because the undertaking of the defendant was only to continue in force till the 300 copies were sold by the plaintiff, and his parting with them to a firm of which he was only a partner, was, in fact, a selling, just as much as it would be in the case of a joint stock company (*b*).

Denman, C.J., in summing up, said: "It seems that the defendant left the plaintiff at liberty to sell as he pleased, but bound himself down not to sell under the prices stated, and

(*a*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 1 K. & J. 656, 669.
(*b*) *Benning* v. *Dore* (1831), 5 Car. & P. 427.

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this is an answer to some part of the argument urged in favour of the defendant. You will have to say, first, whether the agreement was made; of this, there does not seem any doubt; and then, whether it was broken; and if it was, you must spell out the damage as well as you can from the evidence. It is a very difficult thing to ascertain the amount of damage. I think, in considering that subject, you may reasonably consider, as damage must arise from the effect produced upon the price of the work in the market by the defendant's having sold copies at a sum lower than the stipulated price, whether the plaintiff's own selling at 45*s.* and 46*s.* might not have contributed to that depreciation. If you are satisfied that the agreement was broken, then you will have to say to what extent the plaintiff has been injured."

Ordinary agreement between authors and publishers not a partnership.

The ordinary agreement between authors and publishers to the effect that the former shall contribute the manuscript, and the latter shall in the first place defray the cost of the bringing out of the work, and repay himself out of the proceeds of the sale, and that the net profits shall be divided, is not properly a partnership, and the author is not liable for paper and printing supplied and executed for the publisher (*a*).

In all agreements between authors and publishers the terms should be distinctly stated, and the respective rights of the parties clearly defined. The number of copies of which the edition is to consist should be declared, for otherwise a publisher might, if so disposed, print 20,000 as one edition (*b*). But a person who has acquired the right to publish one edition only of a work, cannot publish another edition, without authority.

Construction of the word "edition."

The meaning of the word "edition," and the construction to be placed upon it, were fully discussed in *Reade* v. *Bentley*. It was argued that where a work has once been sterotyped, the term "edition" was no longer applicable; and that when a work is published in what are called "thousands," 20,000 or 30,000 being circulated, each thousand could not properly be called an "edition." Wood, V.-C., however, thought that not merely in point of etymology, but having regard to what actually takes place in the publication of any work, an "edition of a work was the putting of it forth before the public, and if

(*a*) See *Gardiner* v. *Childs*, 8 C. & P. 345; *Reade* v. *Bentley* (1857), 3 K. & J. 271, and 4 *Ibid.* 656; *Wilson* v. *Whitehead* (1845), 10 M. & W. 503; *Gale* v. *Leckie* (1817), 2 Stark. 107; *Venables* v. *Wood*, 3 Ross, L. C. on Com. Law, 529, cited Lindley on Partnership, 22.

(*b*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 669; 27 L. J. (Ch.) 254; *Sweet* v. *Cater* (1841), 11 Sim. 572; 5 Jur. 68; *Stevens* v. *Benning* (1854), 1 K. & J. 168; 6 D. M. & G. 223; *Benning* v. *Dore* (1831), 5 C. & P. 427.

this were done in batches at successive periods, each successive batch was a new edition; and the question whether the individual copies had been printed by means of movable type or by stereotype, did not seem to him to be material. If movable type were used, the type having been broken up, the new edition was prepared by setting up the type afresh, printing afresh, advertising afresh, and repeating all the other necessary steps to obtain a new circulation of the work. In that case the contemplated break between the two editions was more complete, because, until the type was again set up, nothing further could be done. It made no substantial difference as regards the meaning of the term 'edition,' whether the new 'thousand' had been printed by a resetting of movable type, or by stereotype, or whether they have been printed at the same time with the former thousand or subsequently. A new 'edition' is published whenever, having in his storehouse a certain number of copies, the publisher issues a fresh batch of them to the public. This, according to the practice of the trade, is done, as is well known, periodically. And if, after printing 20,000 copies, a publisher should think it expedient for the purpose of keeping up the price of the work, to issue them in batches of a thousand at a time, keeping the rest under lock and key, each successive issue would be a new 'edition' in every sense of the word" (*a*).

In many cases an advantage would accrue by a publisher so doing; for when an author sells the copyright of a work to a publisher for a certain specified time, the publisher has the right, after the expiration of that period, of selling copies of the work he has printed before the expiration of the time limited.

Right of the publisher to sell copies on hand prior to the expiration of his copyright.

This was decided in the important case of *Howitt* v. *Hall* (*b*). Mr. William Howitt applied for an injunction to restrain the defendants, Messrs. Hall and Virtue, the publishers, from selling or otherwise disposing of any copies of an original work called 'A Boy's Adventures in the Wilds of Australia,' of which Mr. Howitt was the author and registered proprietor. It appeared by the affidavits that in the year 1854, a negotiation was entered into with the defendants by Mrs. Mary

(*a*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 667. See *Blackwood* v. *Brewster*, 7 Dec. 1860; 23 Sess. Cas. 2nd Series, 142. In this case it was held that an editor, under an agreement that he should prepare every new edition of a work, and should receive a certain sum for his services, is not entitled to superintend, or to claim payment for, the reprinting of a part of the work to replace copies destroyed by fire. The copies reprinted under such circumstances do not form a new edition, but go to replace the part of the edition destroyed.

(*b*) (1862), 10 W. R. 381; 6 L. T. 348.

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Howitt, the wife of the plaintiff, who was then in Australia, for the sale to them of the copyright of the work in question for four years, for a sum of £250. This negotiation, after some discussion as to the precise date from which the contract was to commence, resulted in an agreement being entered into on behalf of the plaintiff, which was afterwards confirmed on his return from Australia by the following memorandum signed by him:

"Gentlemen,—I confirm the agreement entered into with you by Mrs. Howitt on the 14th of March, 1854, for the publication of 'A Boy's Adventures in Australia,' being a copyright of four years from that date.

"WILLIAM HOWITT."

On the same day the defendants sent for the plaintiff's signature a receipt for the £250, "being the purchase-money, as agreed, for the copyright and sole right of sale for four years" of the work in question. In October 1857, the work having then gone through two editions, the defendants contemplated issuing a third and cheap edition, and accordingly gave notice of their intention to Mr. Howitt, by whom it was revised previously to publication. No further copies had been printed, and the term of four years expired in March 1858. In February of 1862, the plaintiff, being about to bring out a uniform edition of the juvenile works of Mrs. Howitt and himself, and having, as he stated, only then for the first time discovered that the defendants were continuing to sell the work and to advertise it for sale, wrote to them complaining of this as an infringement of his copyright and a breach of contract, and asking for compensation. In reply to this application, the defendants insisted on their legal right to sell the remaining stock, as their own *bonâ fide* property, when and as they pleased; but at the same time they expressed their willingness to sell it by auction during the present month of March, so as not to stand in the way of the new edition. This suggestion, however, the plaintiff declined to accede to, and filed his bill praying for an account of the profit made by the defendants since March 1858, and for an injunction. Vice-Chancellor Wood said, that the purchase of the copyright carried with it the right of printing and publishing, and the defendant was entitled to continue selling after the expiration of the four years' term the stock printed by him under his purchase. "The Copyright Acts were directed against unlawful

printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed. The words 'sole right of sale' might or might not have been superfluous; but after four years the right to print the work reverted to the author, who had taken care to secure himself in this respect. It had been suggested that the effect might be to destroy the copyright in the author altogether, as the publisher who had purchased the copyright for a limited period only might during that period print off copies enough to last for all time. A nice question might indeed arise as to the number of copies of which an edition might consist, but a publisher was not likely to incur the useless expense of printing copies enough to exhaust the demand for all time, and have them lying upon his hands unprofitably. Besides this, even if the effect of a sale for four years might operate in this way to deprive the author of all copyright in his work, the answer was that he had not guarded himself against such a contingency. If a manifest case of fraud upon the author were established, the court would know how to deal with it. But nothing of the sort was shown. The defendants had acted quite *bonâ fide*, and were making a perfectly legitimate use of their contract, and their motion must be refused."

Assignor after assignment of copyright may sell copies remaining on hand.

So also it has been held that after he has assigned his copyright, the assignor is free to sell any copies of the book which he had printed before the assignment was made (*a*), but of course this was in the absence of any express agreement between the parties and of the existence of any circumstances from which any implied agreement to the contrary might have been inferred.

But the right is not an exclusive right.

The right of the publisher in the one case, and of the assignor in the other are not exclusive rights. Thus where the plaintiffs had orally agreed with Mrs. Cook to publish at their own expense a book written by her and entitled 'How to Dress on £15 a Year as a Lady, by a Lady,' to sell at a shilling a copy, and to pay her a penny for each copy sold, nothing was said as to how many copies, or how long the plaintiffs should publish, or whether they should be the sole publishers. When forty-four thousand copies had been printed, and forty-two thousand sold, the author notified to the plaintiffs the termination of the agreement, and immediately authorized the defendants to issue a new edition. The plaintiffs now sought to restrain such publication until the copies printed by them

(*a*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418.

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under the agreement should be sold. Sir George Jessel, M.R., held that the plaintiffs were entitled to be the exclusive publishers while the agreement lasted; but that after its termination, though they were at liberty to sell the copies previously printed, they had no power to prevent the author or any person claiming under her from publishing (*a*).

"Looking at the nature of the book," said the Master of the Rolls, "and to the circumstance that it was a term of the agreement that the publishers should publish at their own risk, and pay the royalty, I think the contract, so long as it existed, must be taken to be an exclusive contract, that is to say, that so long as Messrs. Warne and Co. were allowed to publish so long no one else could publish—neither the lady herself, nor an assign from her. That being established, what is the next right it gives to either party? On the determination of the partnership adventure, or whatever you choose to call it, what right had Messrs. Warne and Co. in the book? There is authority upon the subject, but I do not think it wants authority. I think it is plain that no termination of the agreement could deprive them of the right of selling the copies which they have themselves printed under this arrangement. Whether the arrangement was at will or for a term, the publishers must retain the right of selling for their own benefit (subject to the royalty), the copies which they have printed at their own expense, in reliance upon that agreement. So far I go with the plaintiffs; but the plaintiffs then want me to import something else—not only that the publishers should have the right to sell any copies they might have printed before the disagreement, but that the owner of the copyright should not have the right to publish at all, so long as any copies remain unsold. I cannot find that in the agreement, and it does not seem to be reasonable to import it; because it would come to this, that if the publishers printed a very large number of copies it would deprive the authoress of the copyright altogether. I cannot import such an unreasonable term into the agreement.

"Then it is said, that, if you give the publisher no protection, the result may be that the author may publish another edition a day or two after the publishing of the first edition, and so destroy the value of the remaining copies of the first edition remaining unsold. That may be. And it is said that that is so unreasonable that you must infer some stipulation to prevent it. Why? No doubt partnerships at will have their

(*a*) *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497.

inconveniences as well as their conveniences. There is no reason why I should make persons take up a totally different position from that which they have agreed to take up, because it might be convenient to one of the parties after the termination of the arrangement. If you do want that protection for a term of years or for a definite term, you must contract for it. That is all. But I cannot import such a term into the contract. If I did, I should make partnerships at will involve consequences that the partners never dreamt of."

This decision must be received with considerable caution. The Court held that so long as the arrangement between the parties held good the publishers had the exclusive right of publication. They must have had this by reason of an implied agreement to that effect, there being nothing express on the subject in the contract. It was implied in consideration of the expense incurred by the publishers, and must in reason be held to continue so long as there were any copies printed with the consent and concurrence of the author remaining unsold.

And of what value was the exclusive right of publication to the publisher, if this right was determinable at any moment by the author? In short, the right existed so long as it was of no value, but the moment it might have had any value it ceased to exist.

Effect of bankruptcy of publishers where author entitled to share profits.

In a case in the Irish Bankruptcy Court it appeared that Curry and Co. had published three novels by Charles Lever, under an agreement that they should bear the expense of publication and pay to the author a specified sum for a certain number of copies, and should divide with him the net profits on the copies sold beyond that number. While a large number of printed copies remained unsold Curry became bankrupt, when Lever claimed to be entitled as partner to one half of the unsold stock, and to have a special lien on the other half, entitling him as a preferred creditor to be paid in full for whatever balance might be due to him. The commissioner held that if Lever were a partner in the unsold stock, he was a mere dormant and secret partner; and, as the whole of the stock had been in the possession and disposition of the bankrupt, it passed to the creditors under the Bankruptcy Act; and that, for the same reason, Lever had no special lien on it. The commissioner said that the question as to whom the copyright belonged was not within the jurisdiction of the court; but he expressed the opinion that, as Curry had been permitted to advertise himself as the owner, the

PART VII.

copyright should be dealt with as his property in bankruptcy (*a*).

Accounts between authors and publishers.

Where there is an agreement between an author and publisher of a profit-sharing character, a fiduciary relationship is thereby established between the parties, and the author is entitled to an account from the publishers (*b*). Upon this point a valuable opinion was, in the year 1893, obtained by the Society of Authors (*c*) from Lord Justice Cozens-Hardy, when at the Bar, and Mr. J. Rolt. According to this opinion, the publisher must produce all books and documents necessary for the proper vouching of the accounts: he is not entitled to charge the author at a higher rate for the expenses of printing, paper, &c., than he himself actually pays, and must give the author the benefit of all trade commissions and discounts.

(*a*) *In re Curry* (1818), 12 Ir. Eq. 382. As to publisher's commission, see case of *Gatty* v. *Pawson*, 'Times,' March 9, 1873.
(*b*) *Barry* v. *Stevens* (1862), 31 Beav. 258.
(*c*) As to this Society, see note (*a*) *ante*, p. 773.

APPENDICES

APPENDIX (A).

8 Anne, c. 19 (1709).

An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Time therein mentioned.

Repealed by 5 & 6 Vict. c. 45, § 1.

By 7 Geo. II. c. 24, the sole liberty of printing and publishing the Histories of Thuanus, with additions and improvements, during the time therein limited, is granted to Samuel Buckley.

8 Geo. II. c. 13 (1735).

An Act for the Encouragement of the Art of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned.

Whereas divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto, or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-

After 24th June, 1735, the property of historical and other

prints vested in the inventor for fourteen years.

oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked, in mezzotinto or chiaro-oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and

Proprietor's name to be affixed to each print.

Penalty on print-sellers or others pirating the same.

printed on every such print or prints; and that if any print-seller or other person whatsoever, from and after the said twenty-fourth day of June one thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, or copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses, or, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors shall publish, sell, or expose for sale, or otherwise or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale or otherwise disposed of, contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege or protection, or more than one imparlance shall be allowed.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof to print and reprint from the said plates without incurring any of the penalties in this Act mentioned.

Limitations of actions for anything done in pursuance of Act.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such

action shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law. General issue.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards, anything in this Act contained to the contrary notwithstanding. Limitation of actions for offences against this Act.

V. Repealed by 30 & 31 Vict. c. 59.

VI. And be it further enacted by the authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Public Act, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same. Public Act.

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12 GEO. II. c. 36 (1739).

An Act for prohibiting the Importation of Books reprinted abroad, and first composed or written in and printed in Great Britain; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne as empowers the limiting the Prices of Books.

Repealed by 30 & 31 Vict. c. 59.

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7 GEO. III. c. 38 (1766).

An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in, and securing to, Jane Hogarth, Widow, the Property in certain Prints.

WHEREAS an Act of Parliament passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned," has been found ineffectual for the purposes thereby intended: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after Preamble, reciting Act 8 Geo. II.

The original inventors, designers, or engravers, &c., of historical and other prints, and such who shall cause prints to be done from works, &c., of their own invention,

the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, under the restrictions and limitations hereinafter mentioned.

and also such as shall engrave, &c., any print taken from any picture, drawing, model, or sculpture; are entitled to the benefit and protection of the recited and present Act;

II. And be it further enacted by the authority aforesaid, That from and after the said first day of January one thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

and those who shall engrave or import for sale, copies of such prints, are liable to penalties.

III. and IV. repealed by 30 & 31 Vict. c. 59.

Penalties may be sued for as by the recited Act is directed,

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said Act, and extended, and meant to be extended, to the several cases comprised in this Act shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said Act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same, together with his full costs of suit. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

and be recovered with full costs: provided the prosecution be commenced within six months after the fact.

The right intended to be secured by this and the former Act, vested in the proprietors for the term of twenty-eight years from the first publication.

VI. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.

VII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, anything in

pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law.

Limitation of actions.

General issue.

Full costs.

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15 GEO. III. c. 53 (1775).

An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the Eighth Year of the Reign of Queen Anne as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

WHEREAS authors have heretofore bequeathed or given, and may hereafter bequeath or give, the copies of books composed by them, to or in trust for one of the two universities in that part of Great Britain called England, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four universities in Scotland, or to or in trust for the several colleges of Eton, Westminster, and Winchester, and in and by their several wills or other instruments of donation, have directed or may direct, that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education within the said universities and colleges aforesaid: And whereas such useful purposes will frequently be frustrated, unless the sole printing and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said universities, colleges, and houses of learning respectively in perpetuity: May it therefore please Your Majesty that it may be enacted, and be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors

Preamble.

Universities, &c., in England and Scotland to have for ever the sole right of printing, &c., such

books as have been, or shall be, bequeathed to them, unless the same have been, or shall be, given for a limited time.

of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term, any law or usage to the contrary hereof in anywise notwithstanding.

After June 24, 1775, persons printing or selling such books shall forfeit the same, and also 1*d.* for every sheet;

II. And it is hereby further enacted, That if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of June one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin privilege, or protection, or more than one imparlance, shall be allowed.

one moiety to His Majesty, and the other to the prosecutor.

Nothing in this Act to extend to grant any exclusive right longer than such books are printed at the presses of the universities.

III. Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this Act had not been made; but the said universities and colleges as aforesaid shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen Anne.

Universities may sell Copyrights in like manner as any author.

No person subject to penalties for printing, &c.,

IV. And whereas many persons may through ignorance offend against this Act, unless some provision be made whereby the property of every such book as is intended by this Act to be secured to the said

universities, colleges, and houses of learning within the same, and to the said universities in Scotland, and to the respective colleges of Eton, Westminster, and Winchester, may be ascertained and known, be it therefore enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books, which has or have been already bequeathed or given to any of the said universities or colleges aforesaid, be entered in the register book of the Company of Stationers kept for that purpose, in such manner as hath been usual, on or before the twenty-fourth day of June, one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities, or the heads of houses and colleges of learning, or of the principal of any of the said four universities respectively: for every of which entries so to be made as aforesaid the sum of sixpence shall be paid, and no more; which said register book shall and may, at all seasonable and convenient times, be referred to and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

books already bequeathed, unless they be entered before June 24, 1775.

All books that may hereafter be bequeathed, must be entered within two months after such bequest shall be known.

6*d.* to be paid for each entry in the register book, which may be inspected without fee.

Clerk to give a certificate, being paid 6*d.*

V. And be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, lawfully authorized for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by an advertisement in the 'Gazette'), shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall for every such offence forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance shall be allowed.

If clerk refuse or neglect to make entry, &c.

Proprietor of such copyright to have like benefit as if such entry had been made, and the clerk shall forfeit £20.

VI. and VII. repealed by 24 & 25 Vict. c. 101.

VIII. And be it further enacted by the authority aforesaid, That this Act shall be adjudged, deemed, and taken to be a Public Act, and shall be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same.

Public Act.

17 Geo. III. c. 57 (1777).

An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

Recital of Acts 8 Geo. II. and 7 Geo. II.

WHEREAS an Act of Parliament passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned:" And whereas, by an Act of Parliament passed in the seventh year of the reign of His present Majesty, for amending and rendering more effectual the aforesaid Act, and for other purposes therein mentioned, it was (among other things) enacted, That from and after the first day of January one thousand seven hundred and sixty-seven, all and every person or persons who should engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, either ancient or modern, should have and were thereby declared to have the benefit and protection of the said former Act and that Act, for the term therein-after mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etchor, or draughtsman; and whereas the said Acts have not effectually answered the purposes for which they were intended, and it is necessary for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are hereafter mentioned and contained: May it therefore please Your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, if any engraver, etcher, print-seller, or other person shall, within the time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in mezzotinto or chiaro-oscuro, or otherwise, or in any other manner copy, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be engraved, etched, drawn, or designed, in any part of Great Britain, without the express consent of the proprietor

After June 24, 1777, if any engraver, &c., shall, within the time limited by the aforesaid Acts, engrave or etch, &c., any print without the consent of the proprietor, he shall be liable to damages and double costs.

or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs (*a*) of suit.

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27 GEO. III. c. 38 (1787).

An Act for the encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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29 GEO. III. c. 19 (1789).

An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Property thereof in the Designers, Printers, and Proprietors for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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34 GEO. III. c. 23 (1794).

An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Period.

Repealed by 5 & 6 Vict. c. 100, § 1.

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38 GEO. III. c. 71 (1798).

An Act for Encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned.

Repealed by 24 and 25 Vict. c. 101.

(*a*) So much of this statute as relates to double costs is repealed by 24 and 25 Vict. c. 101.

41 Geo. III. c. 107 (1801).

An Act for the further Encouragement of Learning, in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the time therein mentioned.

Repealed by 5 & 6 Vict. c. 45, § 1.

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54 Geo. III. c. 56.

An Act to amend and render more effectual an Act of His present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.

[18th May, 1814.]

38 Geo. III. c. 71.

Whereas by an Act, passed in the thirty-eighth year of the reign of His present Majesty, intituled "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned," the sole right and property thereof were vested in the original proprietors, for a time therein specified: And whereas the provisions of the said Act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person or persons who shall make or cause to be made any new and original sculpture or model, or copy or cast, of the human figure, or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure or human figures, and of all and in every such busts or busts, and of

The sole right and property of all new and original sculptures, models, copies, and casts, vested in the proprietors for fourteen years.

all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same: Provided, in all and in every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published.

Works published under the recited Act, vested in the proprietors for fourteen years.

II. And be it further enacted, That the sole right and property of all works, which have been put forth or published under the protection of the said recited Act, shall be extended, continued to and vested in the respective proprietors thereof for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

Persons putting forth pirated copies or pirated casts, may be prosecuted.

III. And be it further enacted, That if any person or persons shall within such term of fourteen years, make or import, or cause to be made or imported, or exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model or copy, or cast of the human figure or figures, or of any such bust or busts, or of any such part or parts of the human figure clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of any invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matter or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended, and protected by this Act in any of the cases as aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages and double costs.

IV. Provided nevertheless, That no person or persons who shall or

Purchasers of

copyright secured in the same.

may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this Act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her, or their own hand, or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying, or casting, or vending the same, anything contained in this Act to the contrary notwithstanding.

Limitation of actions.

V. Provided always, and be it further enacted, That all actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

An additional term of fourteen years, in case the maker of the original sculpture, &c., shall be living.

VI. Provided always, and be it further enacted, That from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture or model, or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself, or themselves, of such right of making or disposing of any new and original sculpture, model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this Act.

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54 Geo. c. 156 (1814).

An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns.

Repealed by 5 & 6 Vict. c. 45, § 1.

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3 Will. IV. c. 15.

An Act to amend the Laws relating to dramatic literary Property.

[10th June, 1838.]

54 Geo. III. c. 156.

Whereas by an Act passed in the fifty-fourth year of the reign of His late Majesty, King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns," it was amongst other things provided and enacted, that from and after the passing of the said Act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should

have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same, and also, if the author should be living at the end of that period for the residue of his natural life: And whereas it is expedient to extend the provisions of the said Act: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof, or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, and Guernsey, or in any part of the British dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof; and that the author of any such production, printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall from the time of passing this Act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof: Provided nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this Act, have given his consent to or authorized such representation, but that such sole liberty of the author or his assignee shall be subject to such right or authority.

The author of any dramatic piece shall have as his property the sole liberty of representing it or causing it to be represented at any place of dramatic entertainment.

Proviso as to cases where previous to the passing of this Act, a consent has been given.

II. And be it further enacted, That if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act, or right of the author or his assignee, represent or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings,

Penalty on persons performing pieces contrary to this Act.

or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and meaning of this Act; to be recovered, together with double costs of suit, by such author or other proprietors, in any court having jurisdiction in such cases in that part of the United Kingdom or of the British dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

Limitation of actions.

III. Provided nevertheless, and be it further enacted, That all actions or proceedings for any offence or injury that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

Explanation of words.

IV. And be it further enacted, that whenever authors, persons, offenders, or others are spoken of in this Act in the singular number or in the masculine gender, the same shall extend to any number of persons and to either sex.

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5 & 6 WILL. IV. c. 65.

An Act for preventing the Publication of Lectures without Consent.

[9th September, 1835.]

WHEREAS printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of September one thousand eight hundred and thirty-five the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in short-hand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or

Authors of lectures, or their assigns, to have the sole right of publishing them.

Penalty on other persons publishing, &c., lectures without leave.

of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to His Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, or more than one imparlance shall be allowed.

Penalty on printers or publishers of newspapers publishing lectures without leave.

II. And be it further enacted, That any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing.

Persons having leave to attend lectures not on that account licensed to publish them.

III. And be it further enacted, That no person allowed for certain fee and reward, or otherwise, to attend and be present at any lecture delivered in any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures.

Act not to prohibit the publishing of lectures after expiration of the copyright.

IV. Provided always, That nothing in this Act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned," and by another Act passed in the fifty-fourth year of the reign of King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," or to any lectures which have been printed or published before the passing of this Act.

8 Anne, c. 19.

54 G. III. c. 156.

Act not to extend to lectures delivered in unlicensed places, &c.

V. Provided further, That nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures

delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not been passed.

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6 & 7 Will. IV. c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland.

[13th August, 1836.]

17 G. III. c. 57.

Whereas an Act was passed in the seventeenth year of the reign of His late Majesty King George Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases:" And whereas it is desirable to extend the provisions of the said Act to Ireland: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act all the provisions contained in the said recited Act of the seventeenth year of the reign of His late Majesty King George the Third, and of all the other Acts therein recited, shall be and the same are hereby extended to the United Kingdom of Great Britain and Ireland.

Provisions of recited Act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

II. And be it further enacted, That from and after the passing of this Act, if any engraver, etcher, print-seller, or other person shall within the time limited by the aforesaid recited Acts, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess together with double costs of suit.

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1 & 2 Vict. c. 59 (1838).

"*The International Copyright Act.*"

Repealed by 7 Vict. c. 12.

2 VICT. C. 13 (1839).

An Act for extending the Copyright of Designs for Calico-Printing to Designs for Printing other woven Fabrics.

Repealed by 5 & 6 Vict. c. 100, § 1.

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2 VICT. C. 17 (1839).

An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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5 & 6 VICT. C. 45.

An Act to amend the Law of Copyright.

[1st July, 1842.]

WHEREAS it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from the passing of this Act an Act passed in the eighth year of Her Majesty Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Time therein mentioned"; and also an Act passed in the forty-first year of the reign of His Majesty King George the Third, intituled "An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned;" and also an Act passed in the fifty-fourth year of the reign of His Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceeding at law or in equity pending at the time of passing this Act, or for enforcing any cause of action or suit, or any right or contract then subsisting. Repeal of former Acts; 8 Anne, c. 19. 41 G. III. c. 107. 54 G. III. c. 156.

II. And be it enacted, That in the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published: that the words "dramatic Interpretation of Act.

piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British Dominions" shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the Islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any person, matter, or thing the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of term of copyright in any book hereafter to be published in the lifetime of the author; if published after the author's death.

III. And be it enacted, That the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in

IV. And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists, be it enacted, That the copyright which at the time of passing this Act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this Act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this Act shall be the proprietor of such copyright: Provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other

consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author if he shall be dead and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this Act annexed to be entered in the book of registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

V. And whereas it is expedient to provide against the suppression of books of importance to the public, be it enacted, That it shall be lawful for the judicial committee of Her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence.

Judicial committee of the Privy Council may license the republication of books which the proprietor refuses to republish after death of the author.

VI. And be it enacted, That a printed copy of the whole of every book which shall be published after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter-press, or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this Act, and also of any second or subsequent edition of every book of which the first of some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the United Kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher thereof at the British Museum.

Copies of books published after the passing of this Act, and of all subsequent editions, to be delivered within certain times at the British Museum.

VII. And be it enacted, That every copy of any book which under the provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the

Mode of delivering at the British Museum.

forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the officers of the said museum, or to some person authorized by the trustees of the said museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery, to all intents and purposes, be deemed to be good and sufficient delivery under the provisions of this Act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the *Faculty of* Advocates at Edinburgh, and that of Trinity College, Dublin.

VIII. And be it enacted, That a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof, at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers, who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following (*videlicet*), the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.

IX. Provided also, and be it enacted, That if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same), and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officer of the Stationers' Company.

Penalty for default in delivering copies for the use of the libraries.

X. And be it enacted, That if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorized) of the library for

the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom, in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers' Hall.

XI. And be it enacted, That a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of this Act and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed, shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making a false entry in the book of registry, a misdemeanour.

XII. And be it enacted, That if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanour, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

XIII. And be it enacted, That after the passing of this Act, it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of

the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty; and shall be of the same force and effect as if such assignment had been made by deed.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XIV. And be it enacted, That if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisition of such order.

Remedy for the piracy of books by action on the case.

XV. And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book, so having been unlawfully printed, from parts beyond the sea, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the Court of Session in Scotland which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. And be it enacted, That after the passing of this Act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was

not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objection stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person except the proprietor, &c., shall import into the British dominions for sale or hire any book first composed, &c., within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of 10*l.* and double the value.

XVII. And be it enacted, That after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale, or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act; five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

Books may be seized by officers of customs or excise.

As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

XVIII. And be it enacted, That when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly, without the consent previously obtained, of the author thereof, or his assigns: Provided, also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Proprietors of encyclopædias, periodicals, and works published in a series, may enter at once at Stationers' Hall, and thereon have the benefit of

XIX. And be it enacted, That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts shall be entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work, published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore,

and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

the registration of the whole.

XX. And whereas an Act was passed in the third year of the reign of His late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to the full time by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act, and also of this Act, be it therefore enacted, That the provisions of the said Act of His late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books: and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece, or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed, the same to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

The provisions of 3 & 4 W. IV. c. 15, extended to musical compositions, and the term of copyright, as provided by this Act, applied to the liberty of representing dramatic pieces and musical compositions.

XXI. And be it enacted, That the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the third and fourth year of the reign of His late Majesty King William the Fourth passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 W. IV. c. 15.

XXII. And be it enacted, That no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXIII. And be it enacted, That all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported

Books pirated shall become the property of the

proprietor of the copyright, and *may be* recovered by action.

without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action for trover.

No proprietor of copyright commencing after this Act shall sue or proceed for any infringement before *making entry* in the book of registry.

XXIV. And be it enacted, That no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this Act: Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof, as aforesaid: Provided also, that nothing herein contained shall prejudice the

Proviso for dramatic pieces.

remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of His late Majesty King William the Fourth to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

Copyright shall be personal property.

XXV. And be it enacted, That all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and movable estate.

General issue.

XXVI. And be it enacted, That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments,

Limitation of actions;

or informations for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of

not to extend to actions, &c., in respect of the delivery of books.

none effect: provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this Act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

XXVII. Provided always, and be it enacted, That nothing in this Act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding. Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.

XXVIII. Provided also, and be it enacted, That nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding. Saving all subsisting rights, contracts and engagements.

XXIX. And be it enacted, That this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions. Extent of the Act.

XXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of Parliament. Act may be amended this session.

SCHEDULE to which the preceding Acts refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers' Hall.

We, the undersigned, *A.B.* of the Author of a certain Book, intituled *Y.Z.* [*or* the personal Representative of the Author, *as the case may be*], and *C.D.* of do hereby certify, That we have consented and agree to accept the Benefits of the Act passed in the Fifth Year (*a*) of the Reign of Her Majesty Queen Victoria, Cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said *A.B.* or *C.D.*

Dated this day of 18 .

(Signed) *A.B.*
C.D.

Witness

To the Registering Officer appointed by the Stationers' Company.

(*a*) Her Majesty's reign commenced on the 20th of June, 1837, and her royal consent was given to this Act on the 1st of July, 1842, consequently the Act was passed in the sixth year of the Queen, and should be so pleaded, or as having been passed "in the session held in the fifth and sixth years of her Majesty Queen Victoria"; *Rex* v. *Biers*, 3 Nev. & M. 475; *Gibbs* v. *Pike*, 8 Mee & W. 223. The Schedule was drawn in the fifth year of the Queen, and has not been corrected. It will be advisable in the minute of consent to state the year, by a reference to the session, which will include the words of the schedule. The form is inaccurate in another part by confining the date of consent to the last century. Note by Sweet to Bythewood and Jarman's Conveyancing, vol. vii. p. 618.

No. 2.

FORM of REQUIRING ENTRY of PROPRIETORSHIP.

I, *A.B.* of , do hereby certify, That I am the Proprietor of the Copyright of a Book, intituled *Y.Z.*, and I hereby require you to make entry in the Register Book of the Stationers' Company of my Proprietorship of such Copyright, according to the Particulars underwritten.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y.Z.		*A.B.*	

Dated this day of 18 .

Witness, *C.D.* (Signed) *A.B.*

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y.Z.	*A.B.*	*C.D.*	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any BOOK previously registered.

I, *A.B.* of , being the assigner of the Copyright of the Book hereunder described, do hereby require you to make entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y.Z.	*A.B.*	*C.D.*

Dated this day of 18 .

(Signed) *A.B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any BOOK previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.*]	*A.B.*	*C.D.*

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5 & 6 VICT. C. 47 (1842).

An Act to amend the Laws relating to the Customs.

Repealed by 7 & 8 Vict. c. 73.

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5 & 6 VICT. C. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.

[10th August, 1842.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

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6 & 7 VICT. C. 65.

An Act to amend the Laws relating to the Copyright of Designs.

[22nd August, 1843.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

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6 & 7 VICT. C. 68.

An Act for regulating Theatres.

[22nd August, 1843.]

WHEREAS it is expedient that the laws now in force for regulating theatres and theatrical performances be repealed and other provisions be enacted in their stead: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this same Parliament assembled, and

Repeal of 3 Jac. I. c. 21. Part of 10 G. II. c. 19. by the authority of the same, That an Act passed in the third year of the reign of King James the First, intituled an Act to restrain the abuses of players; and so much of an Act passed in the tenth year of the reign of King George the Second for the more effectual preventing the unlawful playing of interludes within the precincts of the two universities in that part of Great Britain called England, and the places adjacent, as is now in force; and another Act passed in the tenth year 10 G. II. c. 28. of the reign of King George the Second, intituled an Act to explain and amend so much of an Act made in the twelfth year of the reign of Queen Anne, intituled "An Act for reducing the Laws relating to Rogues, Vagabonds, Sturdy Beggars, and Vagrants into one Act of Parliament, and for the more effectual punishment of such Rogues, Vagabonds, Sturdy Beggars, and Vagrants, and sending them whither they ought to be sent," as relates to common players or interludes; and 28 G. III. c. 30. another Act passed in the twenty-eighth year of the reign of King George the Third, intituled an Act to enable Justices of the Peace to license theatrical representations occasionally, under the restrictions Proviso as to licences now in force. therein contained, shall be repealed: Provided always, that any licence now in force granted by the Lord Chamberlain, or granted by any justices of the peace under the provisions of the last-recited Act, shall continue in force for the times for which the same were severally granted, or until revoked by the authority by which they were severally granted.

All theatres for the performance of plays must be licensed. II. And be it enacted, That, except as aforesaid, it shall not be lawful for any person to have or keep any house or other place of public resort in Great Britain, for the public performance of stage plays, without authority by virtue of letters patent from Her Majesty, her heirs and successors, or predecessors, or without licence from the Lord Chamberlain of Her Majesty's household for the time being, or from the justices of the peace as hereinafter provided; and every person who shall offend against this enactment shall be liable to forfeit such sum as shall be awarded by the court in which or the justices by whom he shall be convicted, not exceeding twenty pounds for every day on which such house or place shall have been so kept open by him for the purpose aforesaid, without legal authority.

What licences shall be granted by the Lord Chamberlain. III. And be it enacted, That the authority of the Lord Chamberlain for granting licences shall extend to all theatres (not being patent theatres) within the parliamentary boundaries of the cities of London and Westminster, and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark, and also within those places where Her Majesty, her heirs and successors, shall, in their royal persons, occasionally reside: Provided always, that, except within the cities and boroughs aforesaid, and the boroughs of New Windsor in the county of Berks, and Brightelmstone in the county of Sussex, licences for theatres may be granted by the justices as hereinafter provided, in those places in which Her Majesty, her heirs and successors, shall occasionally reside; but such licences shall not be in force during the

residence there of Her Majesty, her heirs and successors; and during such residence it shall not be lawful to open such theatres as last aforesaid (not being patent theatres) without the licence of the Lord Chamberlain.

Fee for Lord Chamberlain's licence.

And be it enacted, That for every such licence granted by the Lord Chamberlain, a fee, not exceeding ten shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the Lord Chamberlain, shall be paid to the Lord Chamberlain.

Licences may be granted by justices.

V. And be it enacted, That the justices of the peace within every county, riding, division, liberty, cinque port, city, and borough in Great Britain beyond the limits of the authority of the Lord Chamberlain, in which application shall have been made to them for any such licence as is hereinafter mentioned, shall, within twenty-one days next after such application shall have been made to them in writing signed by the party making the same, and countersigned by at least two justices acting in and for the division within which the property proposed to be licensed shall be situate, and delivered to the clerk to the said justices, hold a special session in the division, district, or place for which they usually act, for granting licences to houses for the performance of stage plays, of the holding of which session seven days' notice shall be given by their clerk to each of the justices acting within such division, district, or place; and every such licence shall be given under the hands and seals of four or more of the justices assembled at such special session, and shall be signed and sealed in open court, and afterwards shall be publicly read by the clerk, with the names of the justices subscribing the same.

Fee for justices licence.

VI. And be it enacted, That for every such licence granted by the justices a fee, not exceeding five shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the justices, shall be paid to the clerk of the said justices.

To whom licences shall be granted.

VII. And be it enacted, That no such licence for a theatre shall be granted by the Lord Chamberlain or justices to any person except the actual and responsible manager for the time being of the theatre in respect of which the licence shall be granted: and the name and place of abode of such manager shall be printed on every play bill announcing any representation at such theatre; and such manager shall become bound himself in such penal sum as the Lord Chamberlain or justices shall require, being in no case more than five hundred pounds, and two sufficient sureties, to be approved by the said Lord Chamberlain or justices, each in such penal sum as the Lord Chamberlain or justices shall require, being in no case more than one hundred pounds, for the due observance of the rules which shall be in force at any time during the currency of the licence for the regulation of such theatre, and for securing payment of the penalties which such manager may be adjudged

to pay for breach of the said rules, or any of the provisions of this Act.

Rules for the theatres under the control of the Lord Chamberlain.

VIII. And be it enacted, That in case it shall appear to the Lord Chamberlain that any riot or misbehaviour has taken place in any theatre licensed by him, or in any patent theatre, it shall be lawful for him to suspend such licence or to order such patent theatre to be closed for such time as to him shall seem fit; and it shall also be lawful for the Lord Chamberlain to order that any patent theatre or any theatre licensed by him shall be closed on such public occasions as to the Lord Chamberlain shall seem fit; and while any such licence shall be suspended, or any such order shall be in force, the theatre to which the same applies shall not be entitled to the privilege of any letters patent or licence, but shall be deemed an unlicensed house.

Rules for enforcing order in the theatres licensed by the justices.

IX. And be it enacted, That the said justices of the peace at a special licensing session, or at some adjournment thereof, shall make suitable rules for ensuring order and decency at the several theatres licensed by them within their jurisdiction, and by regulating the times during which they shall severally be allowed to be open, and from time to time, at another special session, of which notice shall be given as aforesaid, may rescind or alter such rules: and it shall be lawful for any one of Her Majesty's principal secretaries of state to rescind or alter any such rules, and also to make such other rules for the like purpose, as to him shall seem fit; and a copy of all rules which shall be in force for the time being shall be annexed to every such licence; and in case any riot or breach of the said rules in any such theatre shall be proved on oath before any two justices usually acting in the jurisdiction where such theatre is situated, it shall be lawful for them to order that the same may be closed for such time as to the said justices shall seem fit; and while such order shall be in force the theatre so ordered to be closed shall be deemed an unlicensed house.

Proviso for the Universities of Oxford and Cambridge.

X. Provided always, and be it enacted, That no such licence shall be in force within the precincts of the Universities of Oxford or Cambridge, or within fourteen miles of the city of Oxford or town of Cambridge, without the consent of the Chancellor or Vice-Chancellor of each of the said Universities respectively; and that the rules for the management of any theatre which shall be licensed with such consent within the limits aforesaid shall be subject to the approval of the said Chancellor or Vice-Chancellor respectively; and in case of the breach of any of the said rules or of any condition on which the consent of the Chancellor or Vice-Chancellor to grant any such licence shall have been given it shall be lawful for such Chancellor or Vice-Chancellor respectively to annul the licence, and thereupon such licence shall become void.

Penalty on persons performing in unlicensed places.

XI. And be it enacted, That every person who for hire shall act or present, or cause, permit, or suffer to be acted or presented, any part in any stage play, in any place not being a patent theatre or duly licensed as a theatre, shall forfeit such sum as shall be awarded by the court in

which or the justices by whom he shall be convicted, not exceeding ten pounds for every day on which he shall so offend.

No new plays or additions to old ones to be acted until submitted to the Lord Chamberlain.

XII. And be it enacted, That one copy of every new stage play and of every new act, scene, or other part added to any old stage play, and of every new prologue or epilogue, and of every new part added to an old prologue or epilogue intended to be produced and acted for hire at any theatre in Great Britain, shall be sent to the Lord Chamberlain of Her Majesty's household for the time being, seven days at least before the first acting or presenting thereof, with an account of the theatre where and the time when the same is intended to be first acted or presented, signed by the master or manager, or one of the masters or managers, of such theatre; and during the said seven days no person shall for hire act or present the same, or cause the same to be acted or presented; and in case the Lord Chamberlain, either before or after the expiration of the said period of seven days, shall disallow any play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, it shall not be lawful for any person to act or present the same, or cause the same to be acted or presented, contrary to such disallowance.

Fees to be paid for examination of plays, &c.

XIII. And be it enacted, That it shall be lawful for the Lord Chamberlain to charge such fees for the examination of the plays, prologues, and epilogues, or parts thereof, which shall be sent to him for examination, as to him from time to time shall seem fit, according to a scale which shall be fixed by him, such fee not being in any case more than two guineas, and such fee shall be paid at the time when such plays, prologues, and epilogues, or parts thereof, shall be sent to the Lord Chamberlain; and the said period of seven days shall not begin to run in any case until the said fee shall have been paid to the Lord Chamberlain, or to some officer deputed by him to receive the same.

The Lord Chamberlain may forbid any play.

XIV. And be it enacted, That it shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, and either absolutely or for such time as he shall think fit.

Penalty for acting plays before they are allowed or after they have been disallowed.

XV. And be it enacted, That every person who for hire shall act or present, or cause to be acted or presented, any new stage play, or any act, scene, or part thereof, or any new prologue or epilogue, or any part thereof, until the same shall have been allowed by the Lord Chamberlain, or which shall have been disallowed by him, and also every person who for hire shall act or present, or cause to be acted or presented any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, contrary to such prohibition as aforesaid, shall for every such offence forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding the sum of fifty pounds; and every licence (in case there be any such)

by or under which the theatre was opened, in which such offence shall have been committed, shall become absolutely void.

What shall be evidence of acting for hire.

XVI. And be it enacted, That in every case in which any money or other reward shall be taken or charged, directly or indirectly, or in which the purchase of any article is made a condition for the admission of any person into any theatre to see any stage play, and also in every case in which any stage play shall be acted or presented in any house, room, or place in which distilled or fermented excisable liquor shall be sold, every actor therein shall be deemed to be acting for hire.

Proof of licence in certain cases to lie on the party accused.

XVII. And be it enacted, That in any proceedings to be instituted against any person for having or keeping an unlicensed theatre, or for acting for hire in an unlicensed theatre, if it shall be proved that such theatre is used for the public performance of stage plays, the burden of proof that such theatre is duly licensed or authorized shall lie on the party accused, and until the contrary shall be proved such theatre shall be taken to be unlicensed.

Proceedings begun before the passing of this Act may be discontinued.

XVIII. And be it enacted, That after the passing of this Act it shall be lawful for any person against whom any action or information shall have been commenced, for the recovery of any forfeiture or pecuniary penalty incurred under the said Act of the tenth year of the reign of King George the Second, to apply to the court in which such action or information shall have been commenced, if such court shall be sitting, or if such court shall not be sitting to any judge of either of the superior courts at Westminster, for an order that such action or information shall be discontinued, upon payment of the costs thereof incurred at the time of such application being made, such costs to be taxed according to the practice of such court; and every such court or judge (as the case may be), upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application, shall make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such action or information shall be forthwith discontinued.

Penalties, how to be recoverable.

XIX. And be it enacted, That all the pecuniary penalties imposed by this Act for offences committed in England may be recovered in any of Her Majesty's courts of record at Westminster, and for offences committed in Scotland by action or summary complaint before the Court of Sessions or judiciary there, or for offences committed in any part of Great Britain in a summary way before two justices of the peace for any county, riding, division, liberty, city, or borough where any such offence shall be committed, by the oath or oaths of one or more credible witness or witnesses, or by the confession of the offender, and in default of payment of such penalty together with the costs, the same may be levied by distress and sale of the offender's goods and chattels, rendering the overplus to such offender, if any there be above the penalty, costs, and charge of distress; and for want of sufficient distress the offender may be imprisoned in the common gaol or house of

correction of any such county, riding, division, liberty, city, or borough for any time not exceeding six calendar months.

XX. And be it enacted, That it shall be lawful for any person who shall think himself aggrieved by any order of such justices of the peace to appeal therefrom to the next general or quarter session of the peace to be holden for the said county, riding, division, liberty, city, or borough, whose order therein shall be final. Appeal.

XXI. And be it enacted, That the said penalties for any offence against this Act shall be paid and applied in the first instance toward defraying the expenses incurred by the prosecutor, and the residue thereof (if any) shall be paid to the use of Her Majesty, her heirs and successors. Appropriation of penalties.

XXII. Provided always, and be it enacted, That no person shall be liable to be prosecuted for any offence against this Act unless such prosecution shall be commenced within six calendar months after the offence committed. Limitation of actions.

XXIII. And be it enacted, That in this Act the words "stage play" shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof: provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind. Interpretation of Act.

XXIV. And be it enacted, That this Act shall extend only to *Great Britain*. Limits of the Act.

XXV. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament. Act may be amended this session.

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7 & 8 VICT. C. 12.

An Act to amend the Law relating to International Copyright.

[10th May, 1844.]

WHEREAS by an Act passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, intituled "An Act for securing to Authors in certain Cases the Benefit of International Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "The International Copyright Act"), Her Majesty was empowered by Order in Council to direct that the authors of books which should after a future time, to be specified in such Order in Council, be published in any foreign country, to be specified in such Order in Council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the British dominions for such term as Her Majesty should by such Order in Council direct, not exceeding the term which authors, 1 & 2 Vict. c. 59.

being British subjects, were then (that is to say, at the time of passing the said Act), entitled to in respect of books first published in the United Kingdom; and the said Act contains divers enactments securing to authors and their representatives the copyright in the books to which any such Order in Council should extend: And whereas an Act was passed in the session of Parliament held in the fifth and sixth years of the reign of Her present Majesty, intituled "An Act to amend the Law of Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "The Copyright Amendment Act") repealing various Acts therein mentioned relating to the copyright of printed books, and extending, defining, and securing to authors and their representatives the copyright of books; And whereas an Act was passed in the session of Parliament held in the third and fourth years of the reign of His late Majesty King William the Fourth, intituled "An Act to amend the Laws relating to Dramatic Literary Property" (and which Act is hereinafter, for the sake of perspicuity, designated as "The Dramatic Literary Property Act"), whereby the sole liberty of representing or causing to be represented any dramatic piece in any place of dramatic entertainment in any part of the British dominions, which should be composed and not printed or published by the author thereof or his assignee, was secured to such author or his assignee; and by the said Act it was enacted that the author of any such production which should thereafter be printed and published, or his assignee, should have the like sole liberty of representation until the end of twenty-eight years from the first publication thereof: And whereas by the said "Copyright Amendment Act" the provisions of the said "Dramatic Literary Property Act" and of the said "Copyright Amendment Act" were made applicable to musical compositions; and it was thereby also enacted, that the sole liberty of representing or performing, or causing or permitting to be represented or performed, in any part of the British dominions, any dramatic piece or musical composition, should endure and be the property of the author thereof and his assigns for the term in the said "Copyright Amendment Act" provided for the duration of the copyright in books, and that the provisions therein enacted in respect of the property of such copyright should apply to the liberty of representing or performing any dramatic piece or musical composition: And whereas under or by virtue of the four several Acts next hereinafter mentioned (that is to say), an Act passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints by vesting the Properties thereof in the Inventors or Engravers during the Time therein mentioned;" an Act passed in the seventh year of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of

5 & 6 Vict. c. 45.

3 & 4 W. IV. c. 15.

8 G. II. c. 13.

7 G. III. c. 38.

designing, engraving, and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints"; an Act passed in the seventeenth year of the reign of His late Majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases"; 17 G. III. c. 57.
and an Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty King William the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland"; (and which said four several Acts are hereinafter, for the sake of perspicuity, designated as "The Engraving Copyright Acts"); every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of such graver, etcher, or draftsman, is entitled to the copyright of such print for the term of twenty-eight years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: And whereas under and by virtue of an Act passed in the thirty-eighth year of the reign of His late Majesty King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned"; and 6 & 7 W. IV. c. 59.
38 G. III. c. 71.
of an Act passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act of His present Majesty, for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts" (and which said Acts are, for the sake of perspicuity, hereinafter designated as "The Sculpture Copyright Acts"), every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso-relievo, representing any of the matters aforesaid or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or 54 G. III. c. 56

combined, is entitled to the copyright in such new and original sculpture, model, copy, and cast, for fourteen years from first putting forth and publishing the same, and for an additional period of fourteen years in case the original maker is living at the end of the first period; and by the said Acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies, and casts, and remedies are provided for the infringement of such copyright: And whereas the powers vested in Her Majesty by the said "International Copyright Act" are insufficient to enable Her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said "Copyright Amendment Act" with respect to authors of books first published in the British dominions; and the said "International Copyright Act" does not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to invest increased powers in Her Majesty in this respect, and for that purpose to repeal the said "International Copyright Act," and to give such other powers to Her Majesty, and to make such further provisions, as are hereinafter contained: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited Act herein designated as the "International Copyright Act" shall be and the same is hereby repealed.

Repeal of International Copyright Act.

Her Majesty, by Order in Council, may direct that authors, &c., of works first published in foreign countries shall have copyright therein within Her Majesty's dominions.

II. And be it enacted, That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that, as respects all or any particular class or classes of the following works (namely), books prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the United Kingdom may be then entitled to under the hereinbefore recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.

If the order applies to books, the copyright law

III. And be it enacted, That in case any such order shall apply to books, all and singular the enactments of the said "Copyright Amendment Act," and of any other Act for the time being in force with

relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said "Copyright Amendment Act."

as to books first published in this country shall apply to the books to which the order relates, with certain exceptions.

IV. And be it enacted, That in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said "Engraving Copyright Acts," and the said "Sculpture Copyright Acts," or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any Act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

If the order applies to prints, sculptures, &c., the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c., to which such order relates.

V. And be it enacted, That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after the time so specified in any such last-mentioned order the enactments of the said "Dramatic Literay Property Act," and of the said "Copyright Amendment Act," and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical

Her Majesty may, by Order in Council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar rights in the British dominions.

compositions to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

Particulars to be observed as to registry and to delivery of copies.

VI. Provided always, and be it enacted, That no author of any book, dramatic piece or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such Order in Council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered, and such copy thereof shall have been so delivered as hereinafter is mentioned; (that is to say), as regards such book, and also such dramatic piece or musical composition (in the event of the same having been printed), the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the Order in Council under which the benefits of this Act shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic piece or musical composition in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the hall of the said company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the Order of Council under which the benefit of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the Order in Council under which the benefits of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number

of impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the hall of the said company; and as regards any such article of sculpture or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the Order in Council under which the benefit of this Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this Act.

In case of books published anonymously, the name of the publisher to be sufficient.

VII. Provided always, and be it enacted, That if a book be published anonymously, it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

The provisions of the Copyright Amendment Act as regards entries in the register book of the Company of Stationers, &c., to apply to entries under this Act.

VIII. And be it enacted, That the several enactments in the said "Copyright Amendment Act" contained with relation to keeping the said register book, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any Order in Council issued in pursuance of this Act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said "Copyright Amendment Act" may be varied to meet the circumstance of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

As to expunging or varying entry grounded in wrongful first publication.

IX. And be it enacted, That every entry made in pursuance of this Act of a first publication shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the court or of the judge taking cognizance of the application for expunging or varying such entry, first, with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not

subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Copies of books wherein copyright is subsisting under this Act printed in foreign countries other than those wherein the book was first published prohibited to be imported.

X. And be it enacted, That all copies of books wherein there shall be any subsisting copyright under or by virtue of this Act, or of any Order in Council made in pursuance thereof, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorized in writing, and if imported contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said "Copyright Amendment Act" with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

Officer of Stationers' Company to deposit books, &c., in the British Museum.

XI. And be it enacted, That the said officer of the said Company of Stationers shall receive at the hall of the said Company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print, shall deposit the same in the library of the British Museum.

Second or subsequent editions.

XII. Provided always, and be it enacted, that it shall not be requisite to deliver to the said officer of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

XIII. And be it enacted, That the respective terms to be specified by such Orders in Council respectively for the continuance of the privilege to be granted in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the register book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different foreign countries and for different classes of books or other articles.

Orders in Council may specify different periods for different foreign countries and for different classes of works.

XIV. Provided always, and be it enacted, That no such order in Council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection has been secured by the foreign power so named in such Order in Council for the benefit of parties interested in works first published in the dominions of Her Majesty similar to those comprised in such order (*a*).

No Order in Council to have any effect unless it states that reciprocal protection is secured.

XV. And be it enacted, That every Order in Council to be made under the authority of this Act shall as soon as may be after the making thereof by Her Majesty in Council be published in the 'London Gazette,' and from the time of such publication shall have the same effect as if every part thereof were included in this Act.

Orders in Council to be published in Gazette, and to have same effect as this Act.

XVI. And be it enacted, That a copy of every Order of Her Majesty in Council made under this Act shall be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament then be sitting, and if not, then within six weeks after the commencement of the then next session of Parliament.

Orders in Council to be laid before Parliament.

XVII. And be it enacted, That it shall be lawful for Her Majesty by an Order in Council from time to time to revoke or alter any Order in Council previously made under the authority of this Act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration (*b*).

Orders in Council may be revoked.

XVIII. Provided always, and be it enacted, That nothing in this Act contained shall be construed to prevent the printing, publication, or sale of any translation of any book the author whereof and his assigns may be entitled to the benefit of this Act (*c*).

Translations.

XIX. And be it enacted, That neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof,

Authors of works first published in foreign countries not entitled to copyright except under this Act.

(*a*) Repealed by International Copyright Act, 1886. (*b*) *Ibid.*

(*c*) This section is repealed so far as it is inconsistent with the provisions contained in 15 & 16 Vict. c. 12, and wholly repealed by International Copyright Act, 1886.

otherwise than such (if any) as he may become entitled to under this Act.

Interpretation clause.

XX. And be it enacted, That in the construction of this Act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan"; and the expression "articles of sculpture" shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and "re-printing" shall include engraving and any other method of multiplying copies; and the expression "Her Majesty" shall include the heirs and successors of Her Majesty; and the expressions "Order of Her Majesty in Council," "Order in Council," and "Order," shall respectively mean Order of Her Majesty acting by and with the advice of Her Majesty's most honourable Privy Council; and the expression "officer of the Company of Stationers" shall mean the officer appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.

Act may be repealed this session.

XXI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

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7 & 8 Vict. c. 73 (1844).

An Act to reduce, under certain Circumstances, the Duties payable upon Books and Engravings.

Repealed by 9 & 10 Vict. c. 58, s. 1.

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8 & 9 Vict. c. 93 (1845).

An Act to regulate the Trade of British Possessions abroad.

Repealed by 16 & 17 Vict. c. 100, s. 358.

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9 & 10 Vict. c. 58 (1846).

An Act to amend an Act of the seventh and eighth Years of Her present Majesty for reducing, under certain Circumstances, the Duties payable upon Books and Engravings.

Repealed by 24 & 25 Vict. c. 101.

10 & 11 VICT. c. 95.

An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom (*a*).

[22nd July, 1847.]

WHEREAS by an Act passed in the session of Parliament holden in the fifth and sixth years of Her present Majesty, intituled "An Act to amend the Law of Copyright," it is amongst other things enacted, that it shall not be lawful for any person not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed or published in any part of the United Kingdom wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: And whereas by an Act passed in the session of Parliament holden in the eighth and ninth years of the reign of Her present Majesty, intituled "An Act to regulate the trade of the British possessions abroad," books wherein the copyright is subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad: And whereas by the said last-recited Act it is enacted, that all laws, by-laws, usages, or customs in practice, or endeavoured or pretended to be in force or practice in any of the British possessions in America, which are in anywise repugnant to the said Act or to any Act of Parliament made or to be made in the United Kingdom, so far as such Act shall relate to and mention the said possessions, are and shall be null and void to all intents and purposes whatsoever: Now be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case the legislature or proper legislative authorities in any British possession shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act or make an ordinance for that purpose, and shall transmit the same in the proper manner, to the Secretary of State in order that it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for Her Majesty, if she think fit so to do, to express Her royal approval of such Act or ordinance, and thereupon to issue an Order in Council declaring that so long as the provisions of such Act or ordinance continue in force within such colony the prohibitions contained in the aforesaid Acts, and

5 & 6 Vict. c. 45.

8 & 9 Vict. c. 93.

Her Majesty may suspend in certain cases the prohibition against the admission of pirated books into the colonies in certain cases

(*a*) Commonly known as the Foreign Reprints Act, 1847.

hereinbefore recited, and any prohibitions contained in the said Acts or in any other Acts against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such Order in Council, anything in the said last-recited Act or in any other Act to the contrary notwithstanding.

Orders in Council to be published in 'Gazette.'

II. And be it enacted, That every such Order in Council shall, within one week after the issuing thereof, be published in the 'London Gazette,' and that a copy thereof, and of every such colonial Act or ordinance so approved as aforesaid by Her Majesty, shall be laid before both Houses of Parliament within six weeks after the issuing of such order, if Parliament be then sitting, or if Parliament be not then sitting, then within six weeks after the opening of the next session of Parliament.

Orders in Council and the Colonial Acts or ordinances to be laid before Parliament.

Act may be amended, &c.

III. And be it enacted, This Act may be amended or repealed by any Act to be passed in the present session of Parliament.

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13 & 14 Vict. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs.

[14th August, 1850.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

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14 Vict. c. 8 (1851).

An Act to extend the Provisions of the "Designs Act, 1850," and to give Protection from Piracy to Persons exhibiting new Invention in the Exhibition of the Works of Industry of all Nations in One thousand eight hundred and fifty-one.

Spent.

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15 & 16 Vict. c. 12.

An Act to enable Her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings.

[28th May, 1852.]

7 & 8 Vict. c. 12.

WHEREAS an Act was passed in the seventh year of the reign of her present Majesty, intituled "An Act to amend the Law relating to

International Copyright," hereinafter called "The International Copyright Act": And whereas a convention has lately been concluded between Her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of Her Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that Her Majesty should be enabled to make similar stipulations in any treaty on the subject of Copyright which may hereafter be concluded with any foreign power: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

Sects. I. to V. repealed by International Copyright Act, 1886.

Adaptations, &c., of dramatic pieces to the English stage not prevented.

VI. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country (*a*).

All articles in newspapers, &c., relating to politics may be republished or translated: and also all similar articles on any subject, unless the author has notified his intention to reserve the right.

VII. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

Section VIII. repealed by International Copyright Act, 1886.

Pirated copies prohibited to be imported except with consent of proprietor.

IX. All copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorized translations of any book or dramatic piece the publication or public representation in the British dominions or translations whereof not authorized as in this Act mentioned shall for the time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the

(*a*) See 38 Vict. c. 12. *post*.

registered proprietor of the copyright of such work or of such book or piece, or his agent authorized in writing; and the provisions of the Act of the sixth year of Her Majesty "to amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British dominions and imported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorized by such proprietor, shall extend and be applicable to all copies of any works of literature and art, and to all translations the importation whereof into any part of the British dominions is prohibited under this Act.

Provisions of 5 & 6 Vict. c. 45, as to forfeiture, &c., of pirated works, &c., to extend to works prohibited to be imported under this Act.

X. The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

Foregoing provisions and 7 & 8 Vict. c. 12, to be read as one Act.

Sect. XI. repealed by International Copyright Act, 1886.

Reduction of Duties.

Recital of 9 & 10 Vict. c. 58.

XII. And whereas an Act was passed in the tenth year of Her present Majesty, intituled "An Act to amend an Act of the seventh and eighth Years of Her present Majesty, for reducing under certain Circumstances, the Duties payable upon Books and Engravings": And whereas by the said convention with the French Republic it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amount specified in the schedule to the said Act of the tenth year of Her present Majesty, chapter fifty-eight: And whereas Her Majesty has, in pursuance of the said convention, and in exercise of the powers given by the said Act, by Order in Council declared that such duties shall be reduced accordingly: And whereas by the said convention it was further stipulated that the said rates of duty should not be raised during the continuance of the said convention; and that if during the continuance of the said convention any reduction of those rates should be made in favour of books, prints, or drawings published in any other country, such reduction shall be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament: Be it enacted, That the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said convention; and that if during the continuance of the said convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, Her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France; such order to be made and published in the same manner and to be subject to the same provisions as orders made in pursuance of the said Act of the tenth year of Her present Majesty, chapter fifty-eight.

Rates of duty not to be raised during continuance of treaty, and if further reduction is made for other countries it may be extended to France.

XIII. And whereas doubts have arisen as to the construction of the

schedule of the Act of the tenth year of Her present Majesty, chapter fifty-eight:

It is hereby declared, That for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "Works originally produced in the United Kingdom, and published in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the Commissioners of Her Majesty's Customs by the importer, consignee, or other person entering the same that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "Works not originally produced in the United Kingdom."

For removal of doubts as to construction of schedule to 9 & 10 Vict. c. 58.

XIV. And whereas by the four several Acts of Parliament following; (that is to say), an Act of the eighth year of the reign of King George the Second, chapter thirteen; an Act of the seventh year of the reign of King George the Third, chapter thirty-eight; an Act of the seventeenth year of the reign of King George the Third, chapter fifty-seven; and an Act of the seventh year of King William the Fourth, chapter fifty-nine, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to remove such doubts.

Lithographs, &c.

Recital of 8 G. II. c. 13, 7 G. III. c. 38, 17 G. III. c. 57, 6 & 7 W. IV. c. 59.

It is hereby declared, That the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

For removal of doubts as to the provisions of the said Acts including lithographs, prints, &c.

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16 & 17 VICT. C. 107 (1853).

An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom and of the Isle of Man, and certain Laws relating to the Trade and Navigation and the British Possessions.

Sects. 44, 46, and 160, repealed 39 & 40 Vict. c. 36.

18 & 19 Vict. c. 96 (1855).

Act to consolidate certain Acts, and otherwise amend the Laws of the Customs, and an Act to regulate the Office of the Receipt of Her Majesty's Exchequer at Westminster.

Sects. 39 and 40 repealed 39 & 40 Vict. c. 36.

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21 & 22 Vict. c. 70.

An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the Laws relating to the Copyright of designs for ornamenting Articles of Manufacture.

[2nd August, 1858.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

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24 & 25 Vict. c. 73.

An Act to amend the Law relating to the Copyright of Designs.

[6th August, 1861.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

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25 & 26 Vict. c. 68.

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works.

[29th July, 1862.]

Whereas by law, as now established, the authors of paintings, drawings, and photographs have no copyrights in such their works, and it is expedient that the law should in that respect be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Copyright in works hereafter made or sold to vest in the author for his life and for seven years after his death.

I. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or

such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author and seven years after his death; provided that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing signed, at or before the time of such sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless, at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect.

Copyright not to prevent the representation of the same subjects in other works.

II. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Assignments, licences, &c. to be in writing.

III. All copyright under this Act shall be deemed personal or movable estate, and shall be assignable at law, and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers' Hall as in 5 & 6 Vict. c. 45.

IV. There shall be kept at the hall of the Stationers' Company, by the officer appointed by the said company for the purposes of the Act passed in the sixth year of Her present Majesty, intituled "An Act to amend the Law of Copyright," a book or books intituled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration, and no action shall be

sustainable nor any penalty be recoverable in respect of anything done before registration.

Certain enactments of 5 & 6 Vict. c. 45, to apply to the books to be kept under this Act.

V. The several enactments in the said Act of the sixth year of Her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Act of the sixth year of Her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

Penalties on infringement of copyright.

VI. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or knowing that any such repetition, copy, or other imitation has been unlawfully made shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let or hire, distributed, or offered for sale, hire, exhibition or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Penalties on fraudulent productions and sales.

VII. No person shall do or cause to be done any or either of the following acts, that is to say:

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose

of, or offer for sale, exhibition or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish or offer for sale, such work or any copies of such work so altered, as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person or the assigns or legal representatives of the person whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed. Penalties.

VIII. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows: Recovery of pecuniary penalties:

In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides: In England and Ireland;

In Scotland, by action before the Court of Session in ordinary form, in Scotland.

or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment, for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by avocation, suspension, reduction, or otherwise.

Superior Courts of Record in which any action is pending may make an order for an injunction, inspection, or account.

IX. In any action in any of Her Majesty's superior Courts of Record at Westminster and in Dublin for the infringement of any such copyright as aforesaid, it shall be lawful for the court in which such action is pending, if the court be then sitting, or if the court be not sitting then for a judge of such court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account and the proceedings therein respectively, as to such court or judge may seem fit.

Importation of pirated works prohibited.

X. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any foreign state, or in any part of the British dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent authorized in writing; and if the proprietor of any such copyright or his agent, shall declare that any goods imported are repetitions, copies, or imitations of any such painting, drawing, or photograph, or of the negative of any such photograph, and so prohibited as aforesaid, then such goods may be detained by the officers of Her Majesty's Customs.

Application in such cases of Customs Acts.

Saving of right to bring action for damages.

XI. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition, or distribution, any such

work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, or exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited, or distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of such work, or the design thereof, or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor, in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to him of all unlawful repetitions, copies, and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof Provided that nothing herein contained, nor any proceeding, conviction, or judgment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity.

Provisions of 7 & 8 Vict. c. 12, to be considered as included in this Act.

XII. This Act shall be considered as including the provisions of the Act passed in the session of Parliament held in the seventh and eighth years of Her present Majesty, intituled "An Act to amend the Law relating to International Copyright," in the same manner as if such provisions were part of this Act.

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32 & 33 VICT. C. 24.

An Act to repeal certain Enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Typefounders, and Reading Rooms.

[12th July, 1869.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Acts and parts of Acts in first schedule repealed, except as in second schedule.

1. The Acts and parts of Acts described in the first schedule to this Act are hereby repealed, but the provisions of the said Acts which are set out in the second schedule to this Act shall continue in force in the same manner as if they were enacted in the body of this Act: and this Act shall not affect the validity or invalidity of anything already done or suffered, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, and all such remedies and proceedings may be had and continued in the same manner as if this Act had not passed.

Short title.

2. This Act may be cited as "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869."

FIRST SCHEDULE.

Date of Act.	Title of Act, and Part Repealed.	
36 Geo. III. c. 8.	An Act for the more effectually preventing seditious meetings and assemblies.	
39 Geo. III. c. 79, in part.	An Act for the more effectual supression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditions practices.	In part, namely,—sections fifteen to thirty-three, both inclusive, and so much of sections thirty-four to thirty-nine as relates to the above-mentioned sections.
51 Geo. III. c. 65.	An Act to explain and amend an Act passed in the thirty-ninth year of His Majesty's reign, intituled "An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices," so far as respects certain penalties on printers and publishers.	
55 Geo. III. c. 101, in part.	An Act to regulate the collection of stamp duties and matters in respect of which licences may be granted by the Commissioner of Stamps in Ireland.	In part, namely, — section thirteen.
60 Geo. III. & 1 Geo. IV. c. 9.	An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels.	
11 Geo. IV. & 1 Will. IV. c. 73.	An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual prevention and punishment of blasphemous and seditions libels, as relates to the sentence of banishment for the second offence, and to provide some further remedy against the abuse of publishing libels.	
6 & 7 Will. IV. c. 76, in part.	An Act to reduce the duties on newspapers and to amend the laws relating to the duties on newspapers and advertisements.	In part, namely,— Except sections one to four (both inclusive), sections thirty-four and thirty-five, and the schedule.
2 & 3 Vict. c. 12.	An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said Act.	
5 & 6 Vict. c 82, in part.	An Act to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same until the tenth day of October, One thousand eight hundred and forty-five.	In part, namely,— The following words in section twenty: "and also licence to any person to keep any printing presses and types for printing in Ireland."

FIRST SCHEDULE—*continued.*

Date of Act.	Title of Act, and Part Repealed.	
9 & 10 Vict. c. 33, in part.	An Act to amend the laws relating to corresponding societies and the licensing of lecture rooms.	In part, namely,— So far as it relates to any proceedings under the enactments repealed by this schedule.
16 & 17 Vict. c. 59, in part.	An Act to repeal certain stamp duties and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland.	In part, namely,— So much of section twenty as makes perpetual the provisions of 5 & 6 Vict. c. 82, repealed by this Act.

SECOND SCHEDULE.

The enactments in this Schedule, with the exception of sect. 19 of 6 & 7 Will. IV. c. 76, do not apply to Ireland.

39 Geo. III. c. 79. Section 28.

Nothing in this Act contained shall extend or be construed to extend to any papers printed by the authority and for the use of either House of Parliament. Not to extend to papers printed by authority of Parliament.

Section 29.

Every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace who within the said space of six calendar months shall require to see the same, shall for every such omission, neglect, or refusal forfeit and lose the sum of twenty pounds. Printers to keep a copy of every paper they print, and write thereon the name and abode of their employer. Penalty of £20 for neglect or refusing to produce the copy within six months.

Section 31.

Nothing herein contained shall extend to the impression of any engraving, or to the printing by letterpress of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise. Not to extend to impressions of engravings for the printing names and addresses.

Section 34.

No person shall be prosecuted or sued for any penalty imposed by this Act, unless Prosecutions

SECOND SCHEDULE—*continued.*

to be commenced within three months after penalty is incurred.

such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Part of Section 35.

Recovery of penalties.

And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way.

Section 36.

Application of penalties.

All pecuniary penalties hereinbefore imposed by this Act shall, when recovered in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned: that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to His Majesty, his heirs and successors.

51 Geo. III. c. 65. Section 3.

Name and residence of printers not required to be put to bank notes, bills, &c., or to any paper printed by authority of any public board or public office.

Nothing in the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, or in this Act contained, shall extend or be construed to extend to require the name and residence of the printer to be printed upon any bank note, or bank post bill of the Governor and Company of the Bank of England, upon any bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company authorized or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid shall have been or shall be printed.

6 & 7 Will. IV. c. 76. Section 19.

Discovery of proprietors, printers, or publishers of newspapers may be enforced by bill, &c.

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required: Provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

2 & 3 Vict. c. 12. Section 2.

Penalty upon printers for not printing their name and residence on every paper or book, and on persons

Any person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be

SECOND SCHEDULE—*continued.*

printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, either in the said Act or by any Act made for the amendment thereof. publishing the same.

Section 3.

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words: "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be. As to books or papers printed at the University presses.

Section 4.

Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty, or forfeiture made or incurred or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney-General or Solicitor-General in that part of Great Britain called England, or Her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes. No actions for penalties to be commenced except in the name of the Attorney or Solicitor-General in England or the Queen's Advocate in Scotland.

9 & 10 Vict. c. 33. Section 1.

It shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine which may hereafter be incurred under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney-General or Solicitor-General in England or Her Majesty's Advocate in Scotland; and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes. Proceedings shall not be commenced unless in the name of the law officers of the Crown.

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38 VICT. C. 12.

An Act to amend the Law relating to International Copyright.

[13th May, 1875.]

WHEREAS by an Act passed in the fifteenth year of the reign of Her present Majesty, chapter 12, intituled "An Act to enable Her Majesty to carry into effect a convention with France on the subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to copyright in engravings," it is enacted that

"Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions thereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorized by them for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces are first published and publicly represented": And whereas by the same Act it is further enacted, "that, subject to any provisions or qualifications contained in such order, and to the provisions in the said Acts contained or referred to, the law and enactments for the time being in force for ensuring to the author of any dramatic piece, first publicly represented in the British dominions, the sole liberty of representing the same shall be applied for the purposes of preventing the representation of any translations of the dramatic pieces to which such order extends, which are not sanctioned by the authors thereof": And whereas by the sixth section of the said Act it is provided that "nothing in the said Act contained shall be so construed as to prevent fair imitations or adaptation to the English stage of any dramatic piece or musical composition published in any foreign country":

And whereas it is expedient to alter or amend the last mentioned provisions under certain circumstances:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows, viz.:

Section 6 of recited Act not to apply to dramatic pieces in certain cases.

1. In any case in which, by virtue of the enactments hereinbefore recited, any Order in Council has been or may hereafter be made for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty, by Order in Council, to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended; and thereupon the said recited Act shall take effect with respect to such dramatic pieces, and to the translations thereof as if the said sixth section of the said Acts were hereby repealed.

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38 & 39 Vict. c. 93.

An Act to Amend the Copyright of Designs Act.

[13th August, 1875.]

Repealed by the Patents, Designs, and Trade Marks Act, 1883.

39 & 40 VICT. C. 36.

[24th July, 1876.]

"*The Customs Consolidation Act*, 1876."

Prohibitions and restrictions.

42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A Table of Prohibitions and Restrictions inwards. Goods prohibited to be imported.

Table of prohibitions and restrictions.

Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire.

List of prohibited books to be exposed at Custom House.

The Commissioners of Customs shall cause to be made, and to be publicly exposed at the Custom Houses in the several ports in the United Kingdom, lists of all books wherein the copyright shall be subsisting, and as to which the proprietor of such copyright, or his agent, shall have given notice in writing to the said commissioners that such copyright exists, stating in such notice when such copyright expires, accompanied by a declaration made and subscribed before a collector of customs or a justice of the peace, that the contents of such notice are true.

Persons complaining of prohibition of books in Copyright lists may appeal to a Judge in Chambers.

45. If any person shall have cause to complain of the insertion of any book in such lists, it shall be lawful for any judge at chambers, on the application of the person so complaining, to issue a summons, calling upon the person upon whose notice such book shall have been so inserted to appear before any such judge at a time to be appointed in such summons; to show cause why such book shall not be expunged from such lists, and any such judge shall at the time so appointed proceed to hear and determine upon the matter of such summons, and make his order thereon in writing; and upon service of such order, or a certified copy thereof, upon the Commissioners of Customs or their secretary for the time being, the said commissioners shall expunge such book from the list, or retain the same therein, according to the tenor of such order; and in case such books shall be expunged from such lists, the importation thereof shall not be deemed to be prohibited. If at

the time appointed in any such summons the person so summoned shall not appear before such judge, then upon proof by affidavit that such summons, or a true copy thereof, has been personally served upon the person so summoned, or sent to him by post to or left at his last known place of abode or business, any such judge may proceed ex parte to hear and determine the matter; but if either party be dissatisfied with such order, he may apply to a superior court to review such decision and to make such further order thereon as the court may see fit: Provided always, that nothing herein contained shall affect any proceeding at law or in equity which any party aggrieved by reason of the insertion of any book pursuant so any such notice, or the removal of any book from such list pursuant to any such order, or by reason of any false declaration under this Act, might or would otherwise have against any party giving such notice or obtaining such order, or making such false declaration.

As to the Channel Islands and other Possessions.

Foreign reprints of books under copyright prohibited.

152. Any books wherein the copyright shall be subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British Possessions abroad: provided always, that no such books shall be prohibited to be imported as aforesaid, unless the proprietor of such copyright, or his agent, shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire; and the said commissioners shall cause to be made and transmitted to the several ports in the British Possessions abroad, from time to time to be publicly exposed there, lists of books respecting which such notice shall have been duly given, and all books imported contrary thereto shall be forfeited; but nothing herein contained shall be taken to prevent Her Majesty from exercising the powers vested in her by 10 & 11 Vict. c. 95, intituled "An Act to amend the Law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom," to suspend in certain cases such prohibition.

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45 & 46 Vict. c. 40.

An Act to amend the law of Copyright relating to Musical Compositions.

[10th August, 1882.]

WHEREAS it is expedient to amend the law relating to copyright in musical compositions, and to protect the public from vexatious pro-

ceedings for the recovery of penalties for the unauthorised performance of the same.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Printed notice restraining public performance.

I. On and after the passing of this Act, the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

Provision when right of performance and copyright are vested in different owners.

II. In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Penalty on owner of copyright for non-compliance with notice from owner of right of performance.

III. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds to be recovered in any court of competent jurisdiction.

Costs. 3 & 4 Will. IV. c. 15.

IV. Notwithstanding the provisions of the Act passed in the third and fourth years of His Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the costs of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried (*a*).

Short title.

V. This Act may be cited as the Copyright (Musical Compositions) Act, 1882.

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46 & 47 Vict. c. 57.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.

[25th August, 1883.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Preliminary.

Part I. Preliminary.

Short title.

I. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Division of Act into parts.

II. This Act is divided into parts, as follows:

Part I.—Preliminary.
Part II.—Patents.
Part III.—Designs.
Part IV.—Trade Marks.
Part V.—General.

Commencement of Act.

III. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

PART III.

Designs.

Registration of Designs.

Part III. Designs.

Application for registration of designs.

XLVII. (1) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design

(*a*) Repealed by 51 & 52 Vict. c. 17, the Copyright (Musical Compositions) Act, 1888.

not previously published in the United Kingdom, register the design under this part of this Act.

(2) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4) The same design may be registered in more than one class.

(5) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

XLVIII. (1) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing representation or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

XLIX. (1) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in registered Designs.

Copyright on registration.

L. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking

LI. Before delivery on sale of any articles to which a registered

registered designs.

design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection of registered designs.

LII. (1) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorized in writing by the proprietor, or a person authorized by the comptroller or by the court, and furnishing such information as may enable the comptroller, to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof (*a*).

(2) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

LIII. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Cesser of copyright in certain events.

LIV. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

Register of designs.

LV. (1) There shall be kept at the patent office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

Fees on registration, &c.

LVI. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her

(*a*) See addition by 51 & 52 Vict. c. 50, s. 6.

Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Industrial and International Exhibitions.

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

LVII. The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely:

(*a*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design give the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Legal Proceedings.

Penalty on piracy of registered design.

LVIII. During the existence of copyright in any design:

(*a*) It shall not be lawful for any person without the licence or written consent of the registered proprietor to apply (*a*) such design or fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(*b*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so appllied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction (*b*).

Action for damages.

LIX. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or

(*a*) "Or cause to be applied," added by 51 & 52 Vict. c. 50, s. 7 (1).
(*b*) See addition by 51 & 52 Vict. c. 50, s. 7 (2).

exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

Definitions.

Definition of "design," "copyright."

LX. In and for the purpose of this Act—

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

Definition of proprietor.

LXI. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in respect in which the same may have been so acquired, and to that extent, but not otherwise.

PART V GENERAL.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office

LXXXII. (1) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3) The patent office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade

marks, who shall act under the superintendence and direction of the Board of Trade.

(4) Any Act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorized by the Board of Trade.

Officers and Clerks.

LXXXIII. (1) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of patent office.

LXXXIV. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

LXXXV. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied, or constructive.

Refusal to grant patent, &c., in certain cases.

LXXXVI. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

LXXXVII. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent, copyright in a design or trade mark as the case may be, shall, subject (*a*) to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

LXXXVIII. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies

LXXXIX. Printed or written copies or extracts, purporting to be

(*a*) "To the provisions of this Act and," added by 51 & 52 Vict. c. 50, s. 21.

to be received in evidence.

certified by the comptroller and sealed with the seal of the patent office, of or from patents, specifications, disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Rectification of registers by court.

XC. (1) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person (*a*) from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the court thinks fit; or the court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the court thinks fit.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

Power for comptroller to correct clerical errors.

XCI. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a*) Correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade mark; or

(*b*) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade mark.

(*c*) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name (*b*) appears on the register as the proprietor of the said trade mark.

Falsification of entries in registers.

XCIII. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

XCIV. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

(*a*) "Or of any other particulars," added by 51 & 52 Vict. c. 53, s. 23.
(*b*) See addition by 51 & 52 Vict. c. 50, s. 24.

XCV. The Comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter. Power of comptroller to take directions of law officers.

XCVI. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone. Certificate of comptroller to be evidence.

XCVII. (1) Any application, notice, or other document authorised or required to be left, made, or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. Applications and notices by post.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

XCVIII. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively. Provision as to days for leaving documents at office.

XCIX. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted. Declaration by infant, lunatic, &c.

CI. (1) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act— Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.

(*a*) For regulating the practice of registration under this Act:

(*b*) For classifying goods for the purposes of designs and trade marks:

(*c*) For making or requiring duplicates of specifications, amendments, drawings, and other documents:

(*d*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade

think fit, of specifications, drawings, amendments, and other documents:

(*e*) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgements of, specifications, and other documents in the patent office; and providing for the inspection of indexes and abridgements and other documents:

(*f*) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(*g*) Generally for regulating the business of the patent office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2) Any of the forms in the first schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.

CII. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act (*a*).

International and Colonial Arrangements.

International arrangements for protection of inventions, designs, and trade marks.

CIII. (1) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or

(*a*) See addition by 50 & 51 Vict. c. 50, s. 25.

trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India.

CIV. (1) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act

Offences.

Penalty on falsely representing articles to be patented.

CV. (1) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Scotland; Ireland; &c.

General saving for jurisdiction of courts.

CXI. (1) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks, and with reference to any such proceedings in Scotland, the term "the court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2) If any rectification of a register under this Act is required in pursuance of any proceeding in a court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

CXII. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts;

(2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court;

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which

offences punishable on summary conviction may for the time being be prosecuted (*a*).

Repeal; Transitional Provisions; Savings.

CXIII. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not— Repeal and saving for past operation of repealed enactments, &c.

(*a*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

CXIV. (1) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act. Former registers to be deemed continued.

(2) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

CXV. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act. Saving for existing rules.

CXVI. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof. Saving for prerogative.

General Definitions.

CXVII. (1) In and for the purposes of this Act, unless the context otherwise requires,— General definitions.

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland,

(*a*) See addition, 51 & 52 Vict. c. 50, s. 26.

and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law Officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury;

"Comptroller" means the Comptroller General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

SCHEDULES.

FIRST SCHEDULE

Section 47.

FORM E

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

day of 18

You are hereby requested to register the accompanying Design, in Class in the name of (*a*) of who claims to be the Proprietor thereof, and to return the same to

(*a*) Here insert legibly the name and address of the individual or firm.

Statement of nature of Design

Registration Fees enclosed £ s.

To the Comptroller,
Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed).

THIRD SCHEDULE.

ENACTMENTS REPEALED. Section 113.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. IV. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. IV. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
7 & 8 Vict. c. 69 (*a*) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.

(*a*) *Note.*—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the schedule the words and figures. "Certificate of the registration of a design £5 0 0 And see section 65."
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875].	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72 [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

49 & 50 Vict. c. 33.

An Act to amend the Law respecting International and Colonial Copyright.

[25th June, 1886.]

Whereas by the International Copyright Acts Her Majesty is authorized by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author shall have copyright therein during the period specified in the order, not exceeding the period during which authors of the like works first published in the United Kingdom have copyright:

And whereas at an international conference held at Berne in the month of September one thousand eight hundred and eighty-five, a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout the other countries parties to the convention:

And whereas, without the authority of Parliament, such convention cannot be carried into effect in Her Majesty's dominions, and consequently Her Majesty cannot become a party thereto, and it is expedient to enable Her Majesty to accede to the convention:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short titles and construction.

I. (1) This Act may be cited as the International Copyright Act 1886.

(2) The Acts specified in the first part of the First Schedule to this Act are in this Act referred to and may be cited by the short titles in that schedule mentioned, and those Acts, together with the enactment specified in the second part of the said schedule, are in this Act collectively referred to as the International Copyright Acts.

The Acts specified in the Second Schedule to this Act may be cited by the short titles in that schedule mentioned, and those Acts are in this Act referred to, and may be cited collectively as the Copyright Acts.

(3) This Act and the International Copyright Acts shall be construed together, and may be cited together as the International Copyright Acts, 1844 to 1886.

Amendment as to extent and effect of order under International Copyright Acts.

II. The following provisions shall apply to an Order in Council under the International Copyright Acts:

(1) The order may extend to all the several foreign countries named or described therein:

(2) The order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contain such limitation and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves:

(3) The International Copyright Acts and an order made thereunder shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced.

Simultaneous publication.

III. (1) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work first produced simultaneously in two or more countries, is to be deemed, for the purpose of copyright, to have been first produced, and for the purposes of this section "country" means the United Kingdom and a country to which an order under the said Acts applies.

(2) Where a work produced simultaneously in the United Kingdom,

and in some foreign country or countries, is by virtue of an Order in Council under the International Copyright Acts deemed for the purposes of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom.

Modification of certain provisions of International Copyright Acts.

IV. (1) Where an order respecting any foreign country is made under the International Copyright Acts the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order.

(2) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

Restriction on translation.

V. (1) Where a work, being a book or dramatic piece, is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the order, have the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work.

(2) Provided that if after the expiration of ten years, or any other term prescribed by the order, next after the end of the year in which the work, or in the case of a book published in numbers each number of the book, was first produced, an authorized translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease.

(3) The law relating to copyright, including this Act, shall apply to a lawfully produced translation of a work in like manner as if it were an original work.

(4) Such of the provisions of the International Copyright Act, 1852, relating to translations as are unrepealed by this Act shall apply in like manner as if they were re-enacted in this section.

Application of Act to existing works.

VI. Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation shall be entitled to the same rights and remedies as if the said Acts and this Act and the said order had applied to the said foreign country at the date of the said pro-

duction: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date.

Evidence of foreign copyright.

VII. Where it is necessary to prove the existence of proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature as is in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

Application of Copyright Acts to colonies.

VIII. (1) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom:

Provided that—

(*a*) the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and

(*b*) where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

(2) Where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession, shall be admissible in evidence of the contents of that register, and all courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

(3) Where before the passing of this Act an Act or ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an order modifying the Copyright Acts and this Act, so far as they apply to such British possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

(4) Nothing in the Copyright Acts or this Act shall prevent the

passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in that possession.

Application of International Copyright Acts to colonies.

IX. Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the same or any other Order in Council to declare that such Order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom.

Making of Orders in Council.

X. (1) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purposes of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

Definitions.

XI. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend.

The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author; and in the case of a posthumous work means the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, includes the proprietor, projector, publisher, or conductor.

The expressions "performed" and "performance" and similar words include representation and similar words.

The expression "produced" means, as the case requires, published or made, or, performed or represented, and the expression "production" is to be construed accordingly.

The expression "book published in numbers" includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.

The expr n "treaty" includes any convention or arrangement,

The expression "British possession" includes any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under one central legislature are, for the purposes of this definition, deemed to be one British possession.

XII. The Acts specified in the Third Schedule to this Act are hereby repealed as from the passing of this Act to the extent in the third column of that schedule mentioned: Repeal of Acts.

Provided as follows:

(*a*) Where an Order in Council has been made before the passing of this Act under the said Acts as respects any foreign country the enactments hereby repealed shall continue in full force as respects that country until the said Order is revoked.

(*b*) The said repeal and revocation shall not prejudice any rights acquired previously to such repeal or revocation, and such rights shall continue and may be enforced in like manner as if the said repeal or revocation had not been enacted or made.

FIRST SCHEDULE.

INTERNATIONAL COPYRIGHT ACTS.

PART I.

Session and Chapter.	Title.	Short Title.
7 & 8 Vict. c. 12 .	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1844.
15 & 16 Vict. c. 12 .	An Act to enable her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright in engravings.	The International Copyright Act, 1852.
38 & 39 Vict. c. 12 .	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1875.

PART II.

Session and Chapter.	Title.	Enactment referred to.
25 & 26 Vict. c. 68 .	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	Section twelve

SECOND SCHEDULE.

COPYRIGHT ACTS.

Session and Chapter.	Title.	Short Title.
8 Geo. II. c. 13 .	An Act for the encouragement of the arts of designing, engraving and etching, historical and other prints, by vesting the properties thereof in the inventors and engravers during the time therein mentioned.	The Engraving Copyright Act, 1734.
7 Geo III. c. 38 .	An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the arts of designing, engraving, and etching, historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.	The Engraving Copyright Act, 1766.
15 Geo. III. c. 53 .	An Act for enabling the two Universities in England, the four Universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an Act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse keeper of the Stationers' Company for the use of the several libraries therein mentioned.	The Copyright Act, 1775.
17 Geo. III. c 57 .	An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.	The Prints Copyright Act, 1777.
54 Geo. III. c 56 .	An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.	The Sculpture Copyright Act, 1814.
3 Will. IV. c. 15 .	An Act to amend the laws relating to Dramatic Literary Property.	The Dramatic Copyright Act, 1833.

Session and Chapter.	Title.	Short Title.
5 & 6 Will. IV. c. 65 .	An Act for preventing the publication of Lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. IV. c. 69 .	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. IV. c. 110 .	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third respecting copyrights, as requires the delivery of a copy of every published book to the libraries of Sion College, the four universities of Scotland, and of the King's Inns in Dublin.	The Copyright Act, 1836.
5 & 6 Vict. c. 45 .	An Act to amend the law of copyright.	The Copyright Act, 1842.
10 & 11 Vict. c. 95 .	An Act to amend the law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom.	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68 .	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
7 & 8 Vict. c. 12 .	An Act to amend the law relating to international copyright.	Sections fourteen, seventeen, and eighteen.
15 & 16 Vict. c. 12 .	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright engravings.	Sections one to five both inclusive, and sections eight and eleven.
25 & 26 Vict. c. 68 .	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	So much of section twelve as incorporates any enactment repealed by this Act.

51 & 52 Vict. c. 17.

An Act to amend the law relating to the Recovery of Penalties for the unauthorized Performance of Copyright Musical Compositions.

[5th July, 1888.]

WHEREAS it is expedient to further amend the law relating to copyright in musical compositions, and to further protect the public from vexatious proceedings for the recovery of penalties for the unauthorized performance of the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Provision as to damages.

I. Notwithstanding the provisions of the Act of the session held in the third and fourth years of His Majesty King William the Fourth, chapter fifteen, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the penalty or damages to be awarded upon any action or proceedings, in respect of each and every unauthorized representation or performance of any musical composition, whether published before or after the passing of this Act, shall be such a sum or sums as shall, in the discretion of the court or judge before whom such action or proceedings shall be tried, be reasonable, and the court or judge before whom such action or proceedings shall be tried may award a less sum than forty shillings in respect of each and every such unauthorized representation or performance as aforesaid, or a nominal penalty or nominal damages as the justice of the case may require.

Costs to be in discretion of judge.

45 & 46 Vict. c. 40.

II. The costs of all such actions or proceedings as aforesaid shall be in the absolute discretion of the judge before whom such actions and proceedings shall be tried, and section four of the Copyright (Musical Compositions) Act, 1882, is hereby repealed.

Proprietor not wilfully permitting such performance to be exempt.

III. The proprietor, tenant, or occupier of any place of dramatic entertainment, or other place at which any unauthorized representation or performance of any musical composition, whether published before or after the passing of this Act, shall take place, shall not by reason of such representation or performance be liable to any penalty or damages in respect thereof, unless he shall wilfully cause or permit such unauthorized representation or performance, knowing it to be unauthorized.

Saving for operas and plays.

IV. The provisions of this Act shall not apply to any action or proceedings in respect to a representation or performance of any opera or stage play in any theatre or other place of public entertainment duly licensed in that respect.

Short title.

V. This Act may be cited as the Copyright (Musical Compositions) Act, 1888.

51 & 52 VICT. C. 50.

An Act to amend the Patents, Designs, and Trade Marks Act, 1883.

[24th December, 1888.]

WHEREAS it is expedient to amend the Patents, Designs, and Trade Marks Act, 1883, hereinafter referred to as the principal Act: 46 & 47 Vict. c. 57.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 52, as to inspection of designs.

VI. After sub-section one of section fifty-two of the principal Act the following words shall be added; namely,

"Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered."

Sect. 58, as to piracy of registered designs.

VII. (1) In section fifty-eight of the principal Act the words "or cause to be applied" shall be added after the word "apply."

(2) To the same section the following words shall be added: "Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds."

Sect. 87, as to entry of assignments, &c.

XXI. In section eighty-seven of the principal Act, after the words "subject to" shall be added the words "the provisions of this Act and to."

Sect. 88, as to inspection.

XXII. In section eighty-eight of the principal Act, after the words "subject to" shall be added the words "the provisions of this Act and to."

Sect. 90, as to rectification of register.

XXIII. In section ninety of the principal Act, after the words "of the name of any person," shall be added the words "or of any other particulars."

Sect. 91, as to correction of errors.

XXIV. To section ninety-one of the principal Act the following sub-section shall be added; namely,

"(*d*) Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the design or trade mark to be registered."

Proceedings of Board of Trade.

XXV. After section one hundred and two of the principal Act the following section shall be added and numbered 102A; namely,

"(1) All things required or authorized under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

"(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorized in that behalf by the President of

the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

"(3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified."

Jurisdiction of Lancashire Palatine Court.

XXVI. After section one hundred and twelve of the principal Act the following section shall be added and numbered 112A; namely,

"The Court of Chancery of the County Palatine of Lancaster shall with respect to any action or other proceeding in relation to trade marks the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as Her Majesty's High Court of Justice in England, and the expression 'the court' in this Act shall be construed and have effect accordingly.

"Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that court in other cases."

Construction of principal Act.

XXVII. The principal Act shall, as from the commencement of this Act, take effect subject to the additions, omissions, and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act.

Commencement of Act.

XXVIII. This Act shall, except so far as is by this Act otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.

Short title.

XXIX. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1888, and this Act and the Patents, Designs, and Trade Marks Acts, 1883 to 1886, may be cited collectively as the Patents, Designs, and Trade Marks Acts, 1883 to 1888.

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2 EDW. VII. c. 15.

An Act to amend the Law relating to Musical Copyright.

[22nd July, 1902.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Seizure, &c., of pirated copies.

I. A court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorize a constable to seize such copies without warrant and to bring them before the court, and

the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers.

II. If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorized in writing, and at the risk of such owner.

On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit.

Definitions.

III. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorize another person to do all or any of the following things in respect of a musical work:

(1) To make copies by writing or otherwise of such musical work.

(2) To abridge such musical work.

(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short title and commencement.

IV. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October one thousand nine hundred and two, and shall apply only to the United Kingdom.

(APPENDIX B).

The Berne Convention.

Article I.

The Contracting States [*which were Great Britain, Germany, Belgium, Spain, France, Haiti, Switzerland, and Tunis*] (*a*) are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

Article II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives (*b*).

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

Article III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union (*c*).

Article IV.

The expression "literary and artistic works" comprehends books,

(*a*) Luxembourg has acceded to the Convention, as from 20th June, 1888; Monaco, as from 30th May, 1889; Norway, as from 13th April, 1896; Japan, as from 15th July, 1899; and Denmark, as from 1st July, 1903.

(*b*) Modified by Article I. of Additional Act of Paris see *post*

(*c*) But see Additional Act of Paris, *post*.

pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Article V.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union (*a*).

For works published in incomplete parts ("livraisons") the period of ten years commences from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication.

Article VI.

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles II. and III. as regards their unauthorized reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Article VII.

Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or *current topics* (*b*).

(*a*) See Additional Act of Paris, *post*. (*b*) *Ibid.*

ARTICLE VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

ARTICLE IX.

The stipulations of Article II. apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works.

The stipulations of Article II. apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title-page or commencement of the work that he forbids the public performance.

ARTICLE X.

Unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations, arrangements of music, &c.*, are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the Tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

ARTICLE XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the Tribunals may, if necessary,

require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

Article XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State (*a*).

Article XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union, to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Article XIV.

Under the reserves and conditions to be determined by common agreement (*b*), the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

Article XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

Article XVI.

An international office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its direction. The functions of this office are determined by common accord between the countries of the Union.

(*a*) See Additional Act of Paris, *post*.
(*b*) See paragraph 4 of Final Protocol.

ARTICLE XVII.

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their colonies or foreign possessions.

They may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorized to receive accessions (*a*), and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

ARTICLE XXI.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

(*a*) *i.e.*, the Swiss Confederation. See Additional Act of Paris, *post*.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the 9th day of September, 1886.

Additional Article.

The Plenipotentiaries assembled to sign the Convention concerning the creation of an International Union for the protection of literary and artistic works have agreed upon the following Additional Article, which shall be ratified together with the Convention to which it relates:

The Convention concluded this day in no wise affects the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union or contain other stipulations which are not contrary to the said Convention.

In witness whereof, the respective Plenipotentiaries have signed the present Additional Article.

Done at Berne, the 9th day of September, 1886.

Final Protocol.

In proceeding to the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows:

1. As regards Article IV. it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights (*a*).

2. As regards Article IX. it is agreed those countries of the Union whose legislation implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective Tribunals to decide.

(*a*) See Additional Act of Paris, *post*.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement alluded to in Article XIV. of the Convention is established as follows :

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied (*a*).

5. The organization of the International Office established in virtue of Article XVI. of the Convention shall be fixed by a regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the International Office will be French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different Administrations, will edit a periodical publication in the French language treating questions which concern the Union. The Governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is about to be held, will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussions without a deliberative voice. He will make an annual report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 francs a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The share of the total expense to be paid by each country shall be determined by the division of the Contracting and Acceding States into

(*a*) See Additional Act of Paris, *post*.

six classes, each of which shall contribute in the proportion of a certain number of units, viz.:

First Class	25 units.
Second „	20 „
Third „	15 „
Fourth „	10 „
Fifth „	5 „
Sixth „	3 „

These co-efficients will be multiplied by the number of States of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

7. It is agreed that, as regards the exchange of ratifications contemplated in Article XXI., each contracting party shall give a single instrument, which shall be deposited, with those of the other States, in the Government Archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries present.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

In witness whereof the respective Plenipotentiaries have signed the same.

Done at Berne, the 9th day of September, 1886.

Procès-verbal of Signature.

The undersigned Plenipotentiaries, assembled this day to proceed with the signature of the Convention with reference to the creation of an International Union for the protection of literary and artistic works, have exchanged the following declarations:

1. With reference to the accession of the colonies or foreign possessions provided for by Article XIX. of the Convention:

The Plenipotentiaries of His Catholic Majesty the King of Spain

reserve to the Government the power of making known His Majesty's decision at the time of the exchange of ratifications.

The Plenipotentiary of the French Republic states that the accession of his country carries with it that of all the French colonies.

The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the colonies and foreign possessions of Her Britannic Majesty.

At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following colonies or possessions, in the manner provided for by Article XX. of the Convention, namely:

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

2. With respect to the classification of the countries of the Union having regard to their contributory part to the expenses of the International Bureau (No. 5 of the Final Protocol):

The Plenipotentiaries declare that their respective countries should be ranked in the following classes, namely:

Germany in the first class.
Belgium in the third class.
Spain in the second class.
France in the first class.
Great Britain in the first class.
Haïti in the fifth class.
Italy in the first class.
Switzerland in the third class.
Tunis in the sixth class.

The Plenipotentiary of the Republic of Liberia states that the powers which he has received from his Government authorize him to sign the Convention, but that he has not received instructions as to the class in which his country proposes to place itself with respect to the contribution to the expenses of the International Bureau. He therefore reserves that question to be determined by his Government, who will make known their intention on the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present *procès-verbal*.

Done at Berne, the 9th day of September, 1886.

Procès-verbal recording Deposit of Ratifications.

In accordance with the stipulations of Article XXI., paragraph 1, of the Convention for the creation of an International Union for the protection of literary and artistic works, concluded at Berne on the

9th September, 1886, and in consequence of the invitation addressed to that effect by the Swiss Federal Council to the Governments of the High Contracting Parties, the Undersigned assembled this day in the Federal Palace at Berne for the purpose of examining and depositing the ratifications of :

Her Majesty the Queen of Great Britain and Ireland, Empress of India,

His Majesty the German Emperor, King of Prussia,

His Majesty the King of the Belgians,

Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain,

The President of the French Republic,

The President of the Republic of Haïti,

His Majesty the King of Italy,

The Council of the Swiss Confederation,

His Highness the Bey of Tunis,

to the said International Convention, followed by an Additional Article and Final Protocol.

The instruments of these acts of ratification having been produced and found in good and due form, they have been delivered into the hands of the President of the Swiss Confederation, to be deposited in the Archives of the Government of that country, in accordance with clause No. 7 of the Final Protocol of the International Convention.

In witness whereof the undersigned have drawn up the present *procès-verbal*, to which they have affixed their signatures and the seals of their arms.

Done at Berne, the 5th September, 1887, in nine copies, one of which shall be deposited in the archives of the Swiss Confederation with the instruments of ratification.

For Great Britain . (L.S.) F. O. ADAMS.
For Germany . (L.S.) ALFRED VON BÜLOW.
For Belgium . (L.S.) HENRY LOUMYER
For Spain . (L.S.) COMTE DE LA ALMINA.
For France . (L.S.) EMMANUEL ARAGO.
For Haïti . (L.S.) LOUIS-JOSEPH JANVIER.
For Italy . (L.S.) FÈ.
For Switzerland . (L.S.) DROZ.
For Tunis . (L.S.) H. MARCHAND.

Protocol.

On proceeding to the signature of the *procès-verbal* recording the deposit of the acts of ratification given by the High Parties Signatory to the Convention of the 9th September, 1886, for the creation of an International Union for the protection of literary and artistic works, the Minister of Spain renewed, in the name of his Government, the

declaration recorded in the *procès-verbal* of the Conference of the 9th September, 1886, according to which the accession of Spain to the Convention includes that of all the territories dependent upon the Spanish Crown.

The Undersigned have taken note of this declaration.

In witness whereof they have signed the present Protocol, done at Berne, in nine copies, the 5th September, 1887.

Order in Council, 28th November, 1887.

At the Court at Windsor, the 28th day of November, 1887.

Present:

The Queen's Most Excellent Majesty.

Lord President; Lord Stanley of Preston; Secretary Sir Henry Holland, Bart.

Whereas the Convention of which an English translation is set out in the First Schedule to this Order has been concluded between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the foreign countries named in this Order with respect to the protection to be given by way of copyright to the authors of literary and artistic works:

And whereas the ratifications of the said Convention were exchanged on the fifth day of September one thousand eight hundred and eighty-seven, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say:

Belgium; France; Germany; Haïti; Italy; Spain; Switzerland; Tunis (*a*).

And whereas Her Majesty in Council is satisfied that the foreign countries named in this Order have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's dominions.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, doth order; and it is hereby ordered, as follows:

1. The Convention as set forth in the First Schedule to this Order shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is say:

Belgium; France; Germany; Haïti; Italy; Spain; Switzerland; Tunis;

(*a*) The Orders in Council giving effect to the accession to the Union of Luxembourg, Monaco, Norway, Japan, and Denmark are dated respectively 10th August, 1888; 15th October, 1889; 1st August, 1896; 8th August, 1899; and 9th October, 1903.

and the above countries are in this Order referred to as the foreign countries of the Copyright Union, and those foreign countries together with Her Majesty's dominions, are in this Order referred to as the countries of the Copyright Union.

3. The author of a literary or artistic work which, on or after the commencement of this Order is first produced in one of the foreign countries of the Copyright Union shall, subject as in this Order and in the International Copyright Acts, 1844 to 1886, mentioned, have as respects that work throughout Her Majesty's dominions, the same right of copyright, including any right capable of being conferred by an Order in Council under section two or section five of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period ;

Provided that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein, than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section six of the International Copyright Act, 1886.

4. The rights conferred by the International Copyright Acts, 1844 to 1886, shall, in the case of a literary or artistic work first produced in one of the foreign countries of the Copyright Union by an author who is not a subject or citizen of any of the said foreign countries, be limited as follows, that is to say, the author shall not be entitled to take legal proceedings in Her Majesty's dominions for protecting any copyright in such work, but the publisher of such work shall, for the purpose of any legal proceedings in Her Majesty's dominions for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves.

5. A literary or artistic work first produced simultaneously in two or more countries of the Copyright Union shall be deemed for the purpose of copyright to have been first produced in that one of those countries in which the term of copyright in the work is shortest.

6. Section six of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

7. The Orders mentioned in the Second Schedule to this Order are hereby revoked ;

Provided that neither such revocation, nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

8. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

9. This Order shall come into operation on the sixth day of December, one thousand eight hundred and eighty-seven, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

C. L. PEEL.

FIRST SCHEDULE.

Copyright Convention.

Convention for protecting effectively and in as uniform a manner as possible the rights of authors over their literary and artistic works. Made on the fifth day of September, one thousand eight hundred and eighty-seven, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Haïti; His Majesty the King of Italy; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[*Here follows an English Translation of the Convention, with the omission of the formal beginning and end.*]

SECOND SCHEDULE.

Orders in Council Revoked.

Orders in Council of the dates named below for securing the privileges of copyright in Her Majesty's dominions to authors of works of literature and the fine arts and dramatic pieces, and musical compositions, first produced in the following foreign countries, namely:

Foreign Country.	Date of Order.
Prussia	27th August, 1846.
Saxony	26th September, 1846.
Brunswick	24th April, 1847.
The States of the Thuringian Union	10th August, 1847.
Hanover	30th October, 1847.
Oldenburg	11th February, 1848.
France	10th January, 1852.
Anhalt-Dessau, and Anhalt-Bernbourg	11th March, 1853.
Hamburgh	25th November, 1853, and 8th July, 1855.
Belgium	8th February, 1855.
Prussia, Saxony, Saxe Weimar	19th October, 1855.
Spain	24th September, 1857, and 20th November, 1880.
The States of Sardinia	4th February, 1861.
Hesse-Darmstadt	5th February, 1862.
Italy	9th September, 1865.
German Empire	24th September, 1886.

The Order in Council of 5th August, 1875, revoking the application of section six of 15 and 16 Victoria and chapter 12 to dramatic pieces referred to in the Order in Council of 10th January, 1852, with respect to works first published in France.

ADDITIONAL ACT OF PARIS.

Additional Act modifying Articles 2, 3, 5, 7, 12, 20, *and Numbers* 1 *and* 4 *of the Protocole de Clôture of the Convention of the 9th September*, 1886.

[Paris, May 4, 1896.]

Art. 1. The International Convention of the 9th September, 1886, is modified as follows:

I. *Art.* 2. The first paragraph of Art. 2 shall run as follows: "Authors belonging to any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or published for the first time in one of those countries, the rights which the respective laws do now or shall hereafter grant to nationals."

A fifth paragraph is added in these terms: "Posthumous works are included among those to be protected."

II. *Art.* 3. Art. 3 shall run as follows: "Authors not belonging to one of the countries of the Union, who shall have published or caused to be published for the first time their literary or artistic works in a country which is a party to the Union, shall enjoy, in respect of such works, the protection accorded by the Berne Convention, and by the present Additional Act."

III. *Art.* 5. The first paragraph of Art. 5 shall run as follows: "Authors belonging to any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire period of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it during a period of ten years from the date of the first publication of the original work, by publishing or causing to be published in one of the countries of the Union a translation in the language for which protection is to be claimed."

IV. *Art.* 7. Art. 7 shall run as follows: "Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union, may not be reproduced, in original or translation, in the other countries without the sanction of the authors or of their lawful representatives.

"This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited. In the case of periodicals it shall suffice if such prohibition be indicated in general terms at the beginning of each number.

"In the absence of prohibition, such articles may be reproduced on condition that the source is acknowledged.

"In any case, the prohibition shall not apply to articles on political questions, to the news of the day, or to miscellaneous information."

V. *Art.* 12. Art. 12 shall run as follows: "Pirated works may be seized by the competent authorities of the countries of the Union where the original work is entitled to legal protection.

"The seizure shall take place conformably to the domestic law of each State."

VI. *Art.* 20. The second paragraph of Art. 20 shall run as follows; "Such denunciation shall be made to the Government of the Swiss Confederation. It shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union."

Art. 2. The Final Protocol annexed to the Convention of the 9th September, 1886, is modified as follows:

I. *No.* 1. This clause shall run as follows:

"As regards Art. 4, it is agreed as follows:

"(A) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

"(B) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

"It is understood that an authorized photograph of a work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the Berne Convention and by the present Additional Act, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights."

II. *No.* 4. This clause shall run as follows:

"The common agreement contemplated in Article 14 of the Convention is established as follows:

"The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall operate according to such stipulations on this head as may be contained in special Conventions either actually existing or to be concluded hereafter.

"In the absence of such stipulations between any of the countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Art. 14 is to be applied.

"The stipulations of Art. 14 of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive

right of translation, in so far as such right is established by the present Additional Act.

"The temporary stipulations noted above shall be applicable to countries which may hereafter accede to the Union.

Art. 3. The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of the 9th September, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

Art. 4. The present Additional Act shall have the same force and duration as the Convention of the 9th September, 1886. It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

Declarations interpreting certain Provisions of the Convention of Berne of September 9, 1886, *and of the Additional Act, signed at Paris* (*a*).

[PARIS, May 4, 1896.]

1. By the terms of paragraph 2 of Art. 2 of the Convention, the protection granted by the afore-mentioned Acts depends solely on the accomplishment in the country of origin of the work of the conditions and formalities that may be prescribed by the legislation of that country. The same rule applies to the protection of the photographic works mentioned in No. 1 (b) of the modified "Protocole de Clôture."

2. By *published* works must be understood works actually *published* in one of the countries of the Union. Consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, do not constitute publication in the sense of the afore-mentioned Acts.

3. The adaptation of a novel into a play, or of a play into a novel, comes under the stipulations of Art. 10. The countries of the Union which are not parties to the present Declaration shall be allowed to accede thereto at any time on their request to that effect. The same rule shall apply to countries which may accede either to the Convention of the 9th September, 1886, or to this Convention, or to the Additional Act of the 4th May, 1896. It will be sufficient for this purpose if a notification be addressed in writing to the Swiss Federal Council, who will, in turn, notify this accession to the other Governments.

(*a*) This is the "Interpretative Clause" not ratified by Great Britain.

The present Declaration shall have the same force and duration as the Acts to which it refers.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the form adopted for those Acts, as soon as possible, and within a year at the latest.

In witness whereof, &c.

British Order in Council.

[March 7, 1898.]

1. The Additional Act of the Berne Convention shall as from the commencement of this Order have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say: Germany, Belgium, Spain, France, Italy, Luxembourg, Monaco, Switzerland, and Tunis.

3. The fourth Article of the Order in Council of November 28, 1887, shall as from the commencement of this Order cease to apply to the foreign countries to which this Order extends.

4. The Order in Council of November 28, 1887, shall continue to be of full force and effect save in so far as the same is varied by this Order.

5. Nothing contained in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of the said Order in Council of November 28, 1887, or otherwise, and any person entitled to such right shall continue entitled thereto and to the remedies for the same in like manner as if this Order had not be made.

6. The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section 6 of the International Copyright Act, 1836.

Treaty between Great Britain and Austria-Hungary.

Convention for the Establishment of International Copyright.

[Vienna, April 24, 1893.]

Art. 1. Authors of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally, in the dominions of the High Contracting Parties, the advantages which are, or may be, granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works which have been first published in the dominions of one of the High Contracting Parties, as well as their legal representatives, shall have in the dominions of the other High Contracting Party the same protection and the same legal

remedy against all infringement of their rights, as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the High Contracting Parties, or who reside within its dominions, shall in the dominions of the other Contracting Party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of, or residents in, the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.

Art. 2. The right of translation forming part of the copyright, the protection of the right of translation, is assumed under the conditions laid down by this Convention. If ten years after the expiry of the year in which a work to be protected in Her Majesty's dominions on the basis of this Convention has appeared, no translation in English has been published, the right of translating the work into English shall no longer within those dominions exclusively belong to the author.

In the case of a book published in numbers, the aforesaid period of ten years shall commence at the end of the year in which each number is published.

Art. 3. Authorized translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorized reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 4. The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Art. 5. In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by the law of that State in which the work is first published; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country in order that the remedies against infringement may be obtained which are granted in the other country to works first published there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the laws and regulations both of Great Britain and of Hungary.

Art. 6. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in case of doubt, require the production of such further evidence as may be required by the laws of the respective countries.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the legal representative of the anonymous or pseudonymous author, until the latter or his legal representative has declared and proved his rights.

Art. 7. The provisions of the present Convention cannot in any way derogate from the right of each of the High Contracting Parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any book or production.

Each of the High Contracting Parties reserves also its right to prohibit the importation into its own territory of works which, according to its internal laws, or to the stipulations of treaties with other States, are or may be declared to be illicit reproductions.

Art. 8. The provisions of the present Convention shall be applied to literary or artistic works produced prior to the date of its coming into effect, subject, however, to the limitations prescribed by the following regulations:

(*a*) In the Austro-Hungarian Monarchy—

Copies completed before the coming into force of the present Convention, the production of which has been hitherto allowed, can also be circulated in future.

In the same manner, appliances for the reproduction of works, such as stereotypes, wood blocks, and engraved plates of every description, such as lithogmphers' stones, if their production has not hitherto been prohibited, may continue to be used during a period of four years from the coming into force of the present Convention.

The distribution of such copies, and the use of the said appliance,

is however, only permitted if an inventory of the said copies and appliances is taken by the Government in question, in consequence of an application of the interested party, within three months from the coming into force of the present Convention, and if these copies and appliances are marked with a special stamp.

Dramatic and dramatico-musical works, or musical compositions legally performed before the coming into force of the present Convention, can also be performed in the future.

(*b*) In the United Kingdom of Great Britain and Ireland—

The author and publisher of any literary or artistic work first produced before the date at which this Convention comes into effect shall be entitled to all legal remedies against infringement; provided that where any person has, before the date of the publication of the Order in Council putting this Convention into effect, lawfully produced any work in the United Kingdom, any rights or interest arising from or in connection with such production, which are subsisting and valuable at the said date, shall not be diminished or prejudiced.

Art. 9. The provisions of the present Convention shall apply to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative at the Court of His Imperial and Royal Apostolic Majesty, within two years from the date of the exchange of ratifications of the present Convention.

Art. 10. The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged: and in case neither of the two High Contracting Parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention in the same manner, on behalf of any of the colonies or foreign possessions mentioned in Art. 9, separately.

Art. 11. The present Convention shall be ratified, and the ratifications shal be exchanged at Vienna as soon as possible. It shall come into effect ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties respectively.

In witness whereof, &c.

Regulations for Execution (Great Britain).

Order in Council.

[Windsor, April 30, 1894.]

1. The Convention as set forth in the first schedule to this Order shall, as from the commencement of this Order and subject to Clause 5 of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. The author of a literary or artistic work, which, on or after the commencement of this Order is first produced in the Austro-Hungarian Monarchy, shall, subject as in this Order and in the International Copyright Acts, 1844 to 1886, mentioned, have as respects that work, throughout Her Majesty's dominions, but subject to the exceptions specified in Clause 5 of this Order, the same right of copyright, including any right capable of being conferred by an Order in Council under section two or section five of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period.

Provided that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section six of the International Copyright Act, 1886.

3. Section six of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

4. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

5. This Order shall apply to all the colonies and foreign possessions of Her Majesty, excepting to those hereinafter named, that is to say, except to—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand.

Provided nevertheless that the provisions of this Order may be applied by further Order to any of the above-named colonies or foreign possessions on whose behalf notice to the effect indicated in Art. 9 of the Convention shall be given.

6. This Order shall come into operation on the 11th day of May, 1894, which day is in this Order referred to as the commencement of this Order.

Order in Council.

[Osborne House, Isle of Wight, February 2, 1895.]

. . . Whereas by Clause 5 of the Order in Council, dated the 30th day of April, 1894, it was provided that the said Order should apply to all the colonies and foreign possessions of Her Majesty, excepting to those named in the said clause, but that nevertheless the provisions of the said Order might be applied by further Order to any colonies or foreign possessions named in the said clause on whose behalf notice to the effect indicated in Art. 9 of the said Convention should be duly given:

And whereas the colonies of Newfoundland, Natal, Victoria, Queensland, South Australia, Western Australia, and New Zealand, being some of the colonies excepted from the operation of the said Order, have severally expressed a wish that the said Convention may be made applicable to them, and the notice required by Art. 9 of the said Convention has been duly given on behalf of the above-named colonies by Her Majesty's representatives at the court of His Imperial and Royal Apostolic Majesty: Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, and of the proviso in Clause 5 of the said Order of the 30th day of April, 1894, and Art. 9 of the said Convention, doth order, and it is hereby ordered, that the provisions of the said Order of the 30th day of April, 1894, shall apply, and the same are applied accordingly to the following colonies, that is to say: Newfoundland, Natal, Victoria, Queensland, South Australia, Western Australia, New Zealand. This Order shall come into operation on and from the date hereof.

Order in Council.

[Windsor, May 11, 1895.]

The text of this Order is the same as that of the foregoing Order in Council: it concerns only the British possessions of India.

APPENDIX (C).

STATUTES RELATING TO CANADIAN COPYRIGHT.

38 & 39 Vict. c. 53 (Imperial).

An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting Copyright.

[2nd August, 1875.]

Whereas by an Order of Her Majesty in Council, dated the 7th day of July, 1868, it was ordered that all prohibitions contained in Acts in the Imperial Parliament against the importing into the Province of Canada, or against the selling, letting out to hire, exposing for sale or hire, or possessing therein foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, should be suspended so far as regarded Canada:

And whereas the Senate and House of Commons of Canada did, in the second session of the third Parliament of the Dominion of Canada, held in the thirty-eighth year of Her Majesty's reign, pass a Bill intituled "An Act respecting Copyrights," which Bill has been reserved by the Governor-General for the signification of Her Majesty's pleasure thereon:

And whereas by the said reserved Bill provision is made, subject to such conditions as in the said Bill are mentioned, for securing in Canada the rights of authors in respect of matters of copyright, and for prohibiting the importation into Canada of any work for which copyright under the said reserved Bill has been secured; and whereas doubts have arisen whether the said reserved Bill may not be repugnant to the said Order in Council, and it is expedient to remove such doubts and to confirm the said Bill:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as the Canada Copyright Act, 1875.

Definition of terms.

2. In the construction of this Act the words "book" and "copyright" shall have respectively the same meaning as in the Act of the fifth and

sixth years of Her Majesty's reign, chapter forty-five, intituled "An Act to amend the Law of Copyright."

Her Majesty may assent to the Bill in schedule.

3. It shall be lawful for Her Majesty in Council to assent to the said reserved Bill as contained in the schedule to this Act annexed, and if Her Majesty shall be pleased to signify Her assent thereto, the said Bill shall come into operation at such time and in such manner as Her Majesty may by Order in Council direct; anything in the Act of the twenty-eighth and twenty-ninth years of the reign of Her Majesty, chapter ninety-three, or in any other Act to the contrary notwithstanding.

Colonial reprints not to be imported into United Kingdom.

4. Where any book in which, at the time when the said reserved Bill comes into operation, there is copyright in the United Kingdom, or any book in which thereafter there shall be such copyright, becomes entitled to copyright in Canada in pursuance of the provisions of the said reserved Bill, it shall be unlawful for any person not being the owner, in the United Kingdom, of the copyright in such book, or some person authorized by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada; and for the purposes of such importation the seventeenth section of the said Act of the fifth and sixth years of the reign of Her Majesty, chapter forty-five, shall apply to all such books in the same manner as if they had been reprinted out of the British Dominions.

Order in Council of 7th July, 1868, to continue in force subject to this Act.

5. The said Order in Council, dated the seventh day of July, one thousand eight hundred and sixty-eight, shall continue in force so far as relates to books which are not entitled to copyright for the time being in pursuance of the said reserved Bill.

SCHEDULE (*a*).

Revised Statutes of Canada, 1886, *Chap.* 62.

49 VICT. c. 4.

An Act respecting Copyright (*b*).

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title.

Short title.

1. This Act may be cited as "The Copyright Act," 38 Vict. c. 88, s. 31.

Interpretation.

Interpretation. "Minister."

2. In this Act, unless the context otherwise requires,—

(*a*) The expression "the Minister" means the Minister of Agriculture;

(*a*) This Schedule contained the text of the Canadian Act of 1875, but this Act has been repealed and replaced by the Act of 1886 next set out.

(*b*) This Act is substantially the same as the Canadian Act of April 8, 1875 (38 Vict. c. 88), and the references at the end of the various sections are to corresponding sections of that Act.

"Department." (*b*) The expression "The Department" means the Department of Agriculture;

"Legal representatives." (*c*) The expression "legal representatives" includes heirs, executors, administrators and assigns, or other legal representatives.

Registers of Copyrights.

Minister of Agriculture to keep registers of copyrights. 3. The Minister of Agriculture shall cause to be kept, at the Department of Agriculture, books to be called the "Registers of Copyrights," in which proprietors of literary, scientific, and artistic works or compositions, may have the same registered in accordance with the provisions of this Act. 38 Vict. c. 88, s. 1.

Subjects of Copyright and Conditions to be Complied with.

Who may obtain copyrights. 4. Any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an International Copyright Treaty with the United Kingdom, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print or engraving, and the legal representatives of such person or citizen, shall have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing, and vending such literary, scientific, or artistic works or compositions, in whole or in part and of allowing translations to be printed or reprinted and sold, of such literary works from one language into other languages, for the term of twenty-eight years, from the time of recording the copyright thereof in the manner hereinafter directed. 38 Vict. c. 88, s. 4, *part*.

Translations.

Term of copyright.

Condition for obtaining copyright. 5. The condition for obtaining such copyright shall be that the said literary, scientific, or artistic works shall be printed and published, or reprinted and republished in Canada, or in the case of works of art that they shall be produced or reproduced in Canada, whether they are so published or produced for the first time, or contemporaneously with or subsequently to publication or production elsewhere; but in no case shall the said sole and exclusive right and liberty in Canada continue to exist after it has expired elsewhere:

Proviso.

Exception as to immoral works, &c. (2) No immoral, licentious, irreligious, or treasonable or seditious literary, scientific, or artistic work, shall be the legitimate subject of such registration or copyright. 38 Vict. c. 88, s. 4, *part*.

Copyright in Canada of British copyright works—on what conditions obtainable. 6. Every work of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada, under any Act of the Parliament of Canada, or of the legislature of the late Province of Canada, or of the legislature of any of the Provinces forming part of Canada, shall, when printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act; but nothing in this Act shall be held to

Proviso.

prohibit the importation from the United Kingdom of copies of any such work lawfully printed there:

As to foreign reprints imported before copyright is obtained in Canada.

(2) If any such copyright work is reprinted subsequently to its publication in the United Kingdom, any person who has, previously to the date of entry of such work upon the registers of copyright, imported any foreign reprints, may dispose of such reprints by sale or otherwise; but the burden of proof of establishing the extent and regularity of the transaction shall, in such case, be upon such person. 38 Vict. c. 88, s. 15.

Registration of work first published in separate articles in a periodical.

7. Any literary work, intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be registered under this Act while it is so preliminarily published, if the title of the manuscript and a short analysis of the work are deposited at the department, and if every separate article so published is preceded by the words "Registered in accordance with the Copyright Act," but the work, when published in book or pamphlet form, shall be subject, also, to the other requirements of this Act. 38 Vict. c. 88, s. 10, *part*.

Anonymous books may be entered in the name of first publisher.

8. If a book is published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof, either on behalf of the unnamed author or on behalf of such first publisher, as the case may be. 38 Vict. c. 88, s. 25.

Deposit of copies, &c., with the department.

9. No person shall be entitled to the benefit of this Act unless he has deposited at the department two copies of such book, map, chart, musical composition, photograph, print, cut or engraving, and in the case of paintings, drawings, statuary and sculpture, unless he has furnished a written description of such works of art; and the Minister shall cause the copyright of the same to be recorded forthwith in a book to be kept for that purpose, in the manner adopted by him, or prescribed by the rules and forms made, from time to time, as herein provided. 38 Vict. c. 88, s. 7.

Record of copyright.

Copies to be sent to the Library of Parliament.

10. The Minister shall cause one of such two copies of such book, map, chart, musical composition, photograph, print, cut or engraving, to be deposited in the Library of the Parliament of Canada. 38 Vict. c. 88, s. 8.

As to second and subsequent editions.

11. It shall not be requisite to deliver any printed copy of the second or of any subsequent edition of any book unless the same contains very important alterations or additions. 38 Vict. c. 88, s. 26.

Notice of copyright to appear on the work.

12. No person shall be entitled to the benefit of this Act unless he gives information of the copyright being secured, by causing to be inserted in the several copies of every edition published during the term secured, on the title-page, or on the page immediately following, if it is a book,—or if it is a map, chart, musical composition, print, cut, engraving or photograph, by causing to be impressed on the face thereof, or if it is a volume of maps, charts, music, engravings or photographs, upon the title-page or frontispiece thereof, the following words, that is to say: "Entered according to Act of the Parliament of Canada, in the year , by A. B., at the Department of Agriculture";

Form.

Exception.

but as regards paintings, drawings, statuary and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship. 38 Vict. c. 88, s. 9.

Interim copyright, how obtainable, and its effect.

13. The author of any literary, scientific, or artistic work, or his legal representatives, may, pending the publication or republication thereof in Canada, obtain an interim copyright therefor by depositing at the department a copy of the title or a designation of such work, intended for publication or republication in Canada—which title or designation shall be registered in an interim copyright register at the said department—to secure to such author aforesaid or his legal representatives the exclusive rights recognized by this Act, previous to publication or republication in Canada; but such interim registration shall not endure for more than one month from the date of the original publication elsewhere, within which period the work shall be printed or reprinted and published in Canada:

Duration of interim copyright.

Notice to be given.

(2) In every case of interim registration in this Act the author or his legal representatives shall cause notice of such registration to be inserted once in the "Canada Gazette." 38 Vict. c. 88, s. 10, *part*.

Application for registration may be made through an agent.

Punishment of pretended agents.

14. The application for the registration of an interim copyright, of a temporary copyright, and of a copyright may be made in the name of the author or of his legal representatives, by any person purporting to be the agent of such author or legal representatives; and any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any court of competent jurisdiction. 38 Vict. c. 88, s. 23, *part*.

Assignments and Renewals.

Copyright and right to obtain it to be assignable.

15. The right of an author of a literary, scientific, or artistic work to obtain a copyright, and the copyright when obtained, shall be assignable in law, either as to the whole interest or any part thereof, by an instrument in writing, made in duplicate, and which shall be registered at the department on production of both duplicates and payment of the fee hereinafter mentioned:

Duplicates, how disposed of.

(2) One of the duplicates shall be retained at the department, and the other shall be returned, with a certificate of registration, to the person depositing it. 38 Vict. c. 88, s. 18.

Copyright to assignee of author.

16. Whenever the author of a literary, scientific, or artistic work or composition which may be the subject of copyright, has executed the same for another person or has sold the same to another person for due consideration, such author shall not be entitled to obtain or to retain the proprietorship of such copyright, which is, by the said transaction, virtually transferred to the purchaser; and such purchaser may avail himself of such privilege, unless a reserve of the privilege is specially made by the author or artist in a deed duly executed. 38 Vict. c. 80, s. 16.

Renewal of

17. If, at the expiration of the said term of twenty-eight years, the

author or any of the authors (when the work has been originally composed and made by more than one person) is still living, or if such author is dead and has left a widow or a child, or children living, the same sole and exclusive right and liberty shall be continued to such author, or to such authors still living, or, if dead, then to such widow and child, or children, as the case may be, for the further term of fourteen years; but in such case, within one year after the expiration of such term of twenty-eight years, the title of the work secured shall be a second time registered, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respect to such renewed copyright. 38 Vict. c. 88, s. 5.

copyright, for what term and on what conditions.

Title to be again registered, &c.

18. In all cases of renewal of copyright under this Act the author or proprietor shall, within two months from the date of such renewal, cause notice of such registration thereof to be published once in the "Canada Gazette." 38 Vict. c. 88, s. 6.

Record of renewal to be published.

Conflicting Claims to Copyright.

19. In case of any person making application to register as his own the copyright of a literary, scientific, or artistic work already registered in the name of another person, or in case of simultaneous conflicting applications, or of an application made by any person other than the person entered as proprietor of a registered copyright to cancel the said copyright, the person so applying shall be notified by the Minister that the question is one for the decision of a court of competent jurisdiction, and no further proceedings shall be had or taken by the Minister concerning the application until a judgment is produced maintaining, cancelling, or otherwise deciding the matter:

Cases of conflicting claims in respect of copyright to be settled before a competent court.

(2) Such registration, cancellation, or adjustment of the said right shall then be made by the Minister in accordance with such decision. 38 Vict. c. 88, s. 19.

Action on decision.

Infringement of Copyright.

20. Every person who, without the consent of the author or lawful proprietor thereof first obtained, prints or publishes, or causes to be printed or published, any manuscript not previously printed in Canada or elsewhere, shall be liable to the author or proprietor for all damages occasioned by such publication, and the same shall be recoverable in any court of competent jurisdiction. 38 Vict. c. 88, s. 3.

Liability of persons printing MSS. without owner's consent.

Licences to Republish.

21. If a work copyrighted in Canada becomes out of print, a complaint may be lodged by any person with the Minister, who, on the fact being ascertained to his satisfaction, shall notify the owner of the copyright of the complaint and of the fact; and if, within a reasonable time, no remedy is applied by such owner, the Minister may grant a

Provision for the case of a copyrighted work being out of print.

Licence to print it, &c.

licence to any person to publish a new edition or to import the work, specifying the number of copies and the royalty to be paid on each to the owner of the copyright. 38 Vict. c. 88, s. 22.

Fees.

Fees payable under this Act.

22. The following fees shall be paid to the Minister before an application for any of the purposes herein mentioned is received, that is to say:

On registering a copyright	$1.00
On registering an interim copyright . . .	0.50
On registering a temporary copyright . . .	0.50
On registering an assignment	1.00
For a certified copy of registration . . .	0.50
On registering any decision of a court of justice, for every folio	0.50

On office copies.

For office copies of documents not above mentioned, the following charges shall be made:

For every single or first folio, certified copy . .	$0.50
For every subsequent hundred words (fractions under or not exceeding fifty, not being counted and over fifty being counted for one hundred) .	0.25

Fees to be in full for all services.

(2) The said fees shall be in full of all services performed under this Act by the Minister or by any person employed by him under this Act:

To form part of Consolidated Revenue Fund.

(3) All fees received under this Act shall be paid over to the Minister of Finance and Receiver-General, and shall form part of the Consolidated Revenue Fund of Canada:

No exemption from payment of fees.

(4) No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this Act for such person, and no fee paid shall be returned to the person who paid it. 38 Vict. c. 88, s. 28.

General Provisions.

Proviso: as to scenery, &c.

23. Nothing herein contained shall prejudice the right of any person to represent any scene or object, notwithstanding that there may be copyright in some other representation of such scene or object. 38 Vict. c. 88, s. 14.

As to newspapers, &c., containing portions of British copyright works.

24. Newspapers and magazines published in foreign countries, and which contain, together with foreign original matter, portions of British copyright works republished with the consent of the author or his legal representatives, or under the law of the country where such copyright exists, may be imported into Canada. 38 Vict. c. 88, s. 10, *part*.

Clerical errors, how corrected.

25. Clerical errors which occur in the framing or copying of any instrument drawn by any officer or employee in or of the department shall not be construed as invalidating such instrument, but when

discovered they may be corrected under the authority of the Minister. 38 Vict. c. 88, s. 20.

Certified copies and extracts: their effect.

26. All copies or extracts certified from the department shall be received in evidence, without further proof and without production of the originals. 38 Vict. c. 88, s. 21.

Minister to make rules, forms, &c. Their effect.

27. The Minister may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as appear to him necessary and expedient for the purposes of this Act; and such regulations and forms, circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act; and all documents, executed and accepted by the Minister, shall be held valid, so far as relates to all official proceedings under this Act. 38 Vict. c. 88, s. 2.

Offences and Penalties.

Making false entries, &c. to be a misdemeanor.

28. Every person who wilfully makes or causes to be made any false entry in any of the registry books hereinbefore mentioned of the Minister, or who wilfully produces, or causes to be tendered in evidence, any paper which falsely purports to be a copy of an entry in any of the said books, is guilty of a misdemeanor, and shall be punished accordingly. 38 Vict. c. 88, s. 24.

Fraudulent assumption of authority a misdemeanor.

29. Every person who fraudulently assumes authority to act as agent of the author or of his legal representative for the registration of a temporary copyright, an interim copyright, or a copyright, is guilty of a misdemeanor, and shall be punished accordingly. 38 Vict. c. 88, s. 23, *part*.

Penalty for the infringement of copyright of a book.

30. Every person who, after the interim registration of the title of any book according to this Act, and within the term herein limited, or after the copyright is secured and during the term or terms of its duration, prints, publishes, or reprints or republishes, or imports, or causes to be so printed, published, or imported, any copy or any translation of such book without the consent of the person lawfully entitled to the copyright thereof, first had and obtained by assignment, or who, knowing the same to be so printed or imported, publishes, sells, or exposes for sale, or causes to be published, sold, or exposed for sale, any copy of such book without such consent, shall forfeit every copy of such book to the person then lawfully entitled to the copyright thereof; and shall forfeit and pay for every such copy which is found in his possession, either being printed or printed, published, imported or exposed for sale, contrary to the provisions of this Act, such sum, not exceeding one dollar and not less than ten cents, as the court determines, which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction; and a moiety of such sum shall belong to Her Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. 38 Vict. c. 88, s. 11.

Recovery and application.

31. Every person who, after the registering of any painting, drawing, Penalty for

the infringement of copyright of a painting, &c.

statue or work of art, and within the term or terms limited by this Act, reproduces in any manner, or causes to be reproduced, made or sold, in whole or in part, any copy of any such work of art, without the consent of the proprietor, shall forfeit the plate or plates on which such reproduction has been made, and every sheet thereof so reproduced, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such reproduction published or exposed for sale, contrary to this Act, such sum, not exceeding one dollar and not less than ten cents, as the court determines—which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction; and a moiety of such sum shall belong to Her Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. 38 Vict. c. 88, s. 12.

Recovery and application.

Penalty for the infringement of copyright of a print, chart, music, photograph, &c.

32. Every person who, after the registering of any print, cut or engraving, map, chart, musical composition or photograph, according to the provisions of this Act, and within the term or terms limited by this Act, engraves, etches or works, sells or copies, or causes to be engraved, etched or copied, made or sold, either as a whole or by varying, adding to, or diminishing the main design, with intent to evade the law, or who prints or reprints or imports for sale, or causes to be so printed or reprinted or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any part thereof, without the consent of the proprietor of the copyright thereof, first obtained as aforesaid, or who, knowing the same to be so reprinted, printed or imported without such consent, publishes, sells or exposes for sale, or in any manner disposes of any such map, chart, musical composition, engraving, cut, photograph or print, without such consent as aforesaid, shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph or print has been copied, and also every sheet thereof so copied or printed as aforesaid, to the proprietor of the copyright thereof; and shall also forfeit, for every sheet of such map, musical composition, print, cut or engraving found in his possession, printed or published or exposed for sale, contrary to this Act, such sum, not exceeding one dollar and not less than ten cents, as the court determines—which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction; and a moiety of such sum shall belong to Her Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. 38 Vict. c. 88, s. 13.

Recovery and application.

Penalty for falsely pretending to have copyright.

33. Every person who has not lawfully acquired the copyright of a literary, scientific, or artistic work, and who inserts in any copy thereof printed, produced, reproduced or imported, or who impresses on any such copy that the same has been entered according to this Act, or words purporting to assert the existence of a Canadian copyright in relation thereto, shall incur a penalty not exceeding three hundred dollars:

(2) Every person who causes any work to be inserted in the register of interim copyright and fails to print and publish, or reprint and republish the same within the time prescribed, shall incur a penalty not exceeding one hundred dollars: Penalty for registering interim copyright without publishing.

(3) Every penalty incurred under this section shall be recoverable in any court of competent jurisdiction; and a moiety thereof shall belong to Her Majesty for the public uses of Canada, and the other moiety shall belong to the person who sues for the same. 38 Vict. c. 88, s. 17. Recovery and application of penalties.

34. No action or prosecution for the recovery of any penalty under this Act shall be commenced more than two years after the cause of action arises. 38 Vict. c. 88, s. 27. Limitation of actions.

Revised Statutes of Canada, 1886, *Chap.* 33.

49 VICT. c. 4.

An Act respecting the Duties of Customs.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

5. The goods enumerated in Schedule D shall not be imported into Canada, under the penalty therein mentioned, and if imported shall be forfeited and forthwith destroyed. Prohibited goods.

SCHEDULE A.

GOODS SUBJECT TO DUTIES. Goods subject to duty

Books, &c.

33. Books, printed periodicals and pamphlets, not elsewhere specified, not being foreign reprints of British copyright works nor blank account books, nor copy books, nor books to be written or drawn upon, nor Bibles, prayer-books, psalm and hymn-books, fifteen per cent. *ad valorem*. Books.

34. British copyright works, reprints of, fifteen per cent. *ad valorem*, and in addition thereto twelve and a half per cent. *ad valorem*. Copyright works.

SCHEDULE C.

Free Goods. Free goods.

519. Books, bound, which have been printed more than seven years at the date of importation—except foreign reprints of English copyrighted books, which shall remain subject to the copyright duty. Books.

SCHEDULE D.

The following articles are prohibited to be imported under a penalty of two hundred dollars, together with the forfeiture of the parcel or package of goods in which the same are found, viz.:

814. Reprints of Canadian copyright works, and reprints of British copyright works which have been also copyrighted in Canada. Reprints of Canadian copyright works.

Act of June 2, 1886.

49 VICT. c. 37.

An Act further to amend the Acts relating to duties of Customs, and the importation or exportation of goods into or from Canada.

[Assented to 2nd June, 1886.]

Preamble. In amendment of the several Acts imposing or relating to duties of Customs on the importation or exportation of certain goods, the importation of goods free of duty, the prohibition of the importation of certain others, and matters connected therewith: Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

List of prohibited articles amended. 5. Schedule D of the Act 42 Vict. c. 15, relating to articles the importation of which is prohibited, as amended by the Act 44 Vict. c. 10, is hereby amended:

Sub-section A, 31st March.

As to certain reprints. 1. By striking out the item relating to copyright works, and substituting the following item therefor:

Reprints of Canadian copyright works, and reprints of British copyright works which have been also copyrighted in Canada.

Act of July 18, 1900.

63 & 64 VICT. c. 25.

An Act to amend the Copyright Act.

[Assented to 18th July, 1900.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

In case of licence to reprint book copyrighted in United Kingdom or British possession, Minister may prohibit importation of other reprints. 1. If a book as to which there is subsisting copyright under The Copyright Act has been first lawfully published in any part of Her Majesty's dominions other than Canada, and if it is proved to the satisfaction of the Minister of Agriculture that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a licence to reproduce in Canada, from movable or other types, or from stereotype plates, or from electro-plates, or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the Minister may, notwithstanding anything in The Copyright Act, by order under his hand, prohibit the importation, except with the written consent of the licensee, into Canada of any copies of such book printed elsewhere; provided that two such copies may be specially imported for

the *bonâ fide* use of any public free library or any university or college library, or for the library of any duly incorporated institution or society for the use of the members of such institution or society.

Suspension or revocation of prohibition.

2. The Minister of Agriculture may at any time in like manner by order under his hand, suspend or revoke such prohibition upon importation if it is proved to his satisfaction that—

(*a*) The licence to reproduce in Canada has terminated or expired; or

(*b*) The reasonable demand for the book in Canada is not sufficiently met without importation; or

(*c*) The book is not, having regard to the demand therefor in Canada, being suitably printed or published; or

(*d*) Any other state of things exists on account of which it is not in the public interest to further prohibit importation.

Failure of licensee to supply book.

3. At any time after the importation of a book has been prohibited under section 1 of this Act, any person resident or being in Canada may apply, either directly or through a bookseller or other agent, to the person so licensed to reproduce such book, for a copy of any edition of such book then on sale and reasonably obtainable in the United Kingdom or some other part of Her Majesty's dominions, and it shall then be the duty of the person so licensed, as soon as reasonably may be, to import and sell such copy to the person so applying therefor, at the ordinary selling price of such copy in the United Kingdom or such other part of Her Majesty's dominions, with the duty and reasonable forwarding charges added; and the failure or neglect, without lawful excuse, of the person so licensed to supply such copy within a reasonable time, shall be a reason for which the Minister may, if he sees fit, suspend or revoke the prohibition upon importation.

Customs Department to be notified.

4. The Minister shall forthwith inform the Department of Customs of any order made by him under this Act.

Penalty for unlawful importation.

5. All books imported in contravention of this Act may be seized by any officer of Customs, and shall be forfeited to the Crown and destroyed; and any person importing, or causing or permitting the importation, of any book in contravention of this Act shall, for each offence, be liable, upon summary conviction, to a penalty not exceeding one hundred dollars.

APPENDIX (D).

AMERICAN COPYRIGHT.

REVISED STATUTE OF THE UNITED STATES, BEING THE ACT OF JULY 8, 1870, AS CONTAINED IN THE REVISED STATUTES, SECOND EDITION, 1870.

Copyrights to be under charge of Librarian of Congress.

4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the joint committee of Congress on the Library, shall perform all acts and duties required by law touching copyright.

Seal of Office.

4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office and to be used in evidence shall be authenticated.

Bond of Librarian.

4950. The Librarian of Congress shall give a bond, with sureties to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

Annual Report.

4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

What Publications may be entered for Copyright.

4952. *Any citizen of the United States or resident therein, who shall be* (*a*) the author, inventor, designer, or proprietor of any book, map,

(*a*) The words in italics have been repealed by the Act of 1891, *post*.

chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works (*a*).

Terms of Copyright.

4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

Continuance of Term.

4954. The author, inventor, or designer, *if he be still living and a citizen of the United States or resident therein* (*b*), or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

Assignment of Copyrights and recording.

4955. Copyrights shall be assignable in law, by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

Deposit of Title and Published Copies.

4956. No person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress, at Washington, district of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright, nor unless he shall also, within ten days from the

(*a*) See Act of 1891.
(*b*) The words in italics have been repealed by the Act of 1891.

publication thereof, deliver at the office of the Librarian of Congress, or deposit in the mail addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright, book or other article, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same (*a*).

Book of Entry and Attested Copy.

4957. The Librarian of Congress shall record the name of such copyright, book or other article, forthwith, in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the day of , A. B., of hath deposited in this office the title of a book (map, chart, or otherwise, as the case may be, or description of the article), the title or description of which is in the following words, to wit (here insert the title or description); the right whereof he claims as author (originator, or proprietor as the case may be), in conformity with the laws of the United States respecting copyrights. C. D., Librarian of the Congress." And he shall give a copy of the title or description, under the seal of the Librarian of Congress, to the proprietor whenever he shall require it.

Fees.

4958. The Librarian of Congress shall receive, from the persons to whom the services designated are rendered, the following fees:

First. For recording the title or description of any copyright book or other article, fifty cents.

Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

Third. For recording any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words.

Fourth. For every copy of an assignment, ten cents for every one hundred words.

All fees so received shall be paid into the Treasury of the United States (*b*).

Copies of Copyright Works to be furnished to Librarian of Congress.

4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail addressed to the Librarian of Congress at Washington, District of Columbia, within ten days after its publication, two complete printed copies thereof, of the best edition issued or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made (*c*).

(*a*) This section is amended by the Act of 1891.
(*b*) *Ibid.* (*c*) *Ibid.*

Penalty for Omission.

4960. For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies or description or photograph, required by sections four thousand nine hundred and fifty-six, and four thousand nine hundred and fifty-nine, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

Postmaster to give Receipts.

4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

Publication of Notice of Entry for Copyright prescribed.

4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted the following words: "Entered according to the Act of Congress in the year , by A. B., in the office of the Librarian of Congress at Washington" (*a*).

Penalty for false Publication of Notice of Entry.

4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one half for the person who shall sue for such penalty, and one half to the use of the United States (*b*).

Damages for Violation of Copyright of Books.

4964. Every person who, after the recording of the title of any book as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import,

(*a*) Amended by Act of 1874, sect. 1.
(*b*) Amended by Act of 1891, and Act of 3rd March, 1897.

or knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction (*a*).

For Violating Copyright of Maps, Charts, Prints, &c.

4965. If any person, after the recording the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this chapter, shall, within the term limited and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one half thereof to the proprietor and the other half to the use of the United States (*b*).

For Violating Copyright of Dramatic Compositions.

4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just (*c*).

Damages for printing or publishing any Manuscript without consent of Author, &c.

4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States, or resident therein, shall be liable to the author or proprietor for all damages occasioned by such injury (*d*).

(*a*) Amended by Act of 1891.
(*b*) Amended by Act of 1891, and of 2nd March, 1895.
(*c*) Amended by Act of 6th January, 1897.
(*d*) Amended by Act of 1891.

Limitation of Action in Copyright Cases.

4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

Defences to Action in Copyright Cases.

4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Injunctions in Copyright Cases.

4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

Aliens and Non-residents not Privileged.

4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

ACT OF JUNE 18, 1874.

(18 U.S. St. at L. 78.)

An Act to amend the Law relating to Patents, Trade Marks, and Copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print. cut, engraving, photograph, painting, drawing, chromo, statue, statuary or model, or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof or of the substance on which the same shall be mounted, the following words, viz., "Entered according to Act of Congress, in the year , by A. B., in the office of the Librarian of Congress, at Washington"; or at his option the word "Copyright," together with the year the copyright

was entered, and the name of the party by whom it was taken out; thus: "Copyright 18 , by A. B."

Fees for recording and certifying Assignments of Copyright.

2. That for recording and certifying any instrument of writing for the assignment of a copyright, the Librarian of Congress shall receive from the persons to whom the service is rendered, one dollar; and for every copy of an assignment, one dollar; said fee to cover, in either case, a certificate of the record under seal of the Librarian of Congress; and all fees so received shall be paid into the Treasury of the United States.

Restrictions on application of Words "Engraving," "Cut," and "Print."

3. That in the construction of this Act, the words "engraving," "cut," and "print," shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same.

Repeal of inconsistent Laws.

4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

5. That this Act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

Approved, June 18, 1874.

ACT OF 1891.

An Act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to Copyrights.

March 3, 1891. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and fifty-two of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4952. The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut,

print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and in the case of dramatic composition, of publicly performing or representing it or causing it to be performed or represented by others; and authors or their assigns shall have exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."

Sect. 2. That section forty-nine hundred and fifty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4954. The author, inventor, or designer, if he be still living, or his widow or children if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations with regard to original copyrights, within six months before the expiration of the first term; and such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers printed in the United States for the space of four weeks."

Sect. 3. That section forty-nine hundred and fifty-six of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"Sect. 4956. No person shall be entitled to a copyright unless he shall on or before the day of publication in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright, nor unless he shall also, not later than the day of the publication thereof in this or any foreign country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: Provided, that in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made

therefrom, or from negatives or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone, made within the limits of the United States, shall be, and it is hereby, prohibited, except in the cases specified in paragraphs 512 to 560 inclusive, in section 2 of the Act entitled 'An Act to reduce the Revenue and equalize the Duties on Imports and for other purposes,' approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time, and except in the case of newspapers and magazines not containing, in whole or in part, matter copyrighted under the provisions of this Act, unauthorized by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, that in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted."

Sect. 4. That section forty-nine hundred and fifty-eight of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered the following fees:

"First. For recording the title or description of any copyright book or other article, fifty cents.

"Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

"Third. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

"Fourth. For every copy of an assignment, one dollar.

"All fees so received shall be paid into the Treasury of the United States: Provided, that the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of the lists of copyrighted articles as hereinafter provided for.

"And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this Act and by the deposit of two copies of such other article made or produced in the United States: and the Secretary of the Treasury is

hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to the collectors of customs of the United States and to the postmasters of all post-offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster-General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this Act."

Sect. 5. That section forty-nine hundred and fifty-nine of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial changes shall be made: Provided, however, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this Act, shall be held and deemed capable of being copyrighted as above provided for in this Act, unless they form a part of the series in course of publication at the time this Act shall take effect."

Sect. 6. That section forty-nine hundred and sixty-three of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one half for the person who shall sue for such penalty, and one half to the use of the United States" (*a*).

Sect. 7. That section forty-nine hundred and sixty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book, as provided by this Act, shall, contrary to the provisions of this Act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or import, or knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such book shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be

(*a*) Amended by Act of 3rd March, 1897.

recovered in a civil action by such proprietor in any court of competent jurisdiction."

Sect. 8. That section forty-nine hundred and sixty-five of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this Act, shall within the term limited, contrary to the provisions of this Act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import, either in whole, or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such map or other article as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied and every sheet thereof, either copied or printed, and shall further forfeit, one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale, and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States" (*a*).

Sect. 9. That section forty-nine hundred and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"Sect. 4967. Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury."

Sect. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby, repealed.

Sect. 11. That for the purpose of this Act each volume of a book in two or more volumes, when such volumes are published separately and the first one shall not have been issued before this Act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.

Sect. 12. That this Act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one.

Sect. 13. That this Act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as it own citizens, or when such foreign

(*a*) Amended by Act of 3rd March, 1895.

State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this Act may require.

[Act of 2nd March, 1895.]

Section 4965 of the Revised Statutes of the United States is hereby amended so as to read as follows:

Sect. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this Act, shall, within the time limited, contrary to the provisions of this Act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import either in whole or in part, or by varying the main design, with intent to evade the law, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; *Provided, however*, that in case of any such infringement of the copyright of a photograph made from any object not a work of fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than 100 dollars, nor more than 5000 dollars, and: *Provided, further*, that in case of any such infringement of the copyright of a painting, drawing, statue, engraving, etching, print, or model or design for a work of the fine arts or of a photograph of a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall be not less than 250 dollars, and not more than 10,000 dollars. One half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.

[Act of 6th January, 1897.]

Section 4966 of the Revised Statutes of the United States is hereby amended so as to read as follows:

Sect. 4966. Any person publicly performing or representing any dramatic or musical composition for which a copyright has been obtained, without the consent of the proprietor of the said dramatic or musical composition, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than 100 dollars for the first and 50 dollars for every subsequent performance, as to the court shall appear to be just. If the unlawful performance and representation be wilful and for profit, such person or persons shall be guilty of a misdemeanour and upon conviction be imprisoned for a period not exceeding one year.

[Then follow provisions as to injunctions being operative in any circuit, motions to dissolve injunctions, the jurisdiction of circuit courts, and the hearing of applications.]

[Law of 3rd March, 1897.]

An Act to amend title 60, *chap.* 3, *of the Revised Statutes of the United States relating to Copyright.* [54 *Congress Sess. II. cap.* 392.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that sect. 4963 of the Revised Statutes for the United States be, and the same is hereby, amended so as to read as follows:

Sect. 4963. Every person who shall insert or impress such notice or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, or other article, whether such article be subject to copyright or otherwise, for which he has not obtained a copyright, or shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country; or shall import any book, photograph, chromo or lithograph, or other article, bearing such notice of copyright or words of the same purport, which is not copyrighted in this country, shall be liable to a penalty of 100 dollars, recoverable one half for the person who shall sue for such penalty, and one half to the use of the United States; and the importation into the United States of any book, chromo, lithograph or photograph, or other article, bearing such notice of copyright, when there is no existing copyright therein in the United States, is prohibited, and the circuit courts of the United States sitting in equity are hereby authorized to enjoin the issuing, publishing, or selling of any article marked or imported in violation of the United States Copyright Laws, at the suit of any person complaining

of such violation: *Provided* that this Act shall not apply to any importation of or sale of such goods or articles brought into the United States prior to the passage hereof.

Sect. 2. That all laws and parts of laws inconsistent with the foregoing provision be, and the same are, hereby repealed.

OFFICIAL REGULATIONS.

DIRECTIONS FOR SECURING COPYRIGHT UNDER THE REVISED ACTS OF CONGRESS, INCLUDING THE PROVISIONS FOR FOREIGN COPYRIGHT, BY ACT OF MARCH 3RD, 1891.

Printed Title Required.

1. A printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or model or design for a work of the fine arts, for which copyright is desired, must be delivered to the Librarian of Congress or deposited in the mail within the United States, prepaid, addressed—

LIBRARIAN OF CONGRESS (*a*),
Washington, D. C.

This must be done on or before day of publication in this or any foreign country.

What style of Print.

The printed title required may be a copy of the title-page of such publications as have title-pages. In other cases, the title must be printed expressly for copyright entry, with name of claimant of copyright. The style of type is immaterial, and the print of a typewriter will be accepted. But a separate title is required for each entry, and each title must be printed on paper as large as commercial note. The title of a periodical must include the date and number, and each number of a periodical requires a separate entry of copyright.

Copyright Fees.

2. The legal fee for recording each copyright claim is 50 cents, and for a copy of this record (or certificate of copyright under seal of office) an additional fee of 50 cents is required, making one dollar in case certificate is wanted, which will be mailed as soon as reached in the records. In the case of publications produced by other citizens or residents of the United States, the fee for recording title is one dollar, and 50 cents additional for a copy of the record. Certificates covering more than one entry in one certificate are not issued.

Two Copies Required.

3. Not later than the day of publication of each book or other article, in this country or abroad, two complete copies of the best edition issued must be delivered to perfect the copyright, or deposited in the mail with the United States, addressed—

LIBRARIAN OF CONGRESS (*b*),
Washington, D. C.

(*a*) Now to "Register of Copyrights."
(*b*) *Ibid.*

Free by Mail.

The freight or postage must be prepaid, or the publications enclosed in parcels covered by printed penalty labels, furnished by the Librarian, in which case they will come free by mail (not express), without limit of weight, according to rulings of the Post Office Department. In the case of books, photographs, chromos or lithographs, the two copies deposited must be printed from type set or plates made in the United States, or from negatives or drawings on stone or transfers therefrom, made within the United States.

Penalty.

Without the deposit of copies above required, the copyright is void, and a penalty of 25 dollars is incurred. No copy is required to be deposited elsewhere. The law requires one copy of each new edition wherein any substantial changes are made to be deposited with the Librarian of Congress.

Notice of Copyright to be given by Imprint.—Claimant's name to be Printed.

4. No copyright is valid unless notice is given by inserting in every copy published, on the title-page or the page following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected as a work of the fine arts, by inscribing upon some portion thereof, or on the substance on which the same is mounted, the following words, viz., "Entered according to Act of Congress, in the year , by , in the office of the Librarian of Congress at Washington"; or, at the option of the person entering the copyright, the words, "Copyright, 18 , by ."

The law imposes a penalty of 100 dollars upon any person who has not obtained copyright who shall insert the notice "Entered according to Act of Congress" or Copyright," &c., or words of the same import, in or upon any book or other article.

Translations and Dramas.

5. The copyright law secures to authors or their assigns the exclusive right to translate or to dramatize their own works.

Rights Reserved.

Since the phrase all rights reserved refers exclusively to the right to dramatize or to translate, it has no bearing upon any publications except original works, and will not be entered upon the record in other cases.

Duration of Copyright.

6. The original term of copyright runs for 28 years. Within six months before the end of that time, the author or designer, or his widow or children, may secure a renewal for the further term of 14 years, making 42 years in all.

Renewals.

Applications for renewal must be accompanied by explicit statement of ownership in the case of the author, or of relationship in the case of his heirs, and must state definitely the date and place of entry of the original copyright. Advertisement of renewal is to be made within two months of date of renewal certificate in some newspaper for four weeks.

Time of Publication.

7. The time within which any work entered for copyright may be issued from the press is not stated by any law or regulation, but the courts have held that it

should take place within a reasonable time. A copyright may be secured for a projected work as well as for a completed one. But the law provides for no caveat, or notice of interference—only for actual entry of title.

Assignments.

8. A copyright is assignable in law by any instrument of writing, and such assignment is to be recorded in the office of the Librarian of Congress within 60 days from its date. The fee for this record and certificate is one dollar; and for a certified copy of any record of assignment, one dollar.

Copies or Duplicate Certificates.

9. A copy of the record (or duplicate certificate) of any copyright entry will be furnished, under seal of the office, at the rate of 50 cents each.

Serials or separate Publications.

10. In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright is to be entered for each volume or part of a book, or number of a periodical, or variety, as to style, title, or inscription, of any other article. But a book published serially in a periodical, under the same general title, requires only one entry. To complete the copyright in such a work, two copies of each serial part, as well as of the complete work (if published separately), should be deposited.

Copyrights for Works of Art.

11. To secure copyright for a painting, statue, or model or design intended to be perfected as a work of the fine arts, a definite description must accompany the application for copyright, and a photograph of the same as large as "cabinet size," mailed to the Librarian of Congress not later than the day of publication of the work or design.

The fine arts, for copyright purposes, include only painting and sculpture, and articles of merely ornamental and decorative art are referred to the Patent Office, as subjects for design patents.

No Labels or Names Copyright.

12. Copyrights cannot be granted upon trade marks, nor upon names of companies or articles, nor upon an idea or device, nor upon prints or labels intended to be used for any article of manufacture. If protection for such names or labels is desired, application must be made to the Patent Office, where they are registered at a fee of six dollars for labels and 25 dollars for trade marks.

Foreign or International Copyright.

13. The provisions as to copyright entry in the United States by foreign authors, &c., by Act of Congress, approved March 3rd, 1891 (to take effect July 1, 1891), are the same as the foregoing.

The right of citizens or subjects of a foreign nation to copyright within the United States, is not to take effect unless such nation permits to United States citizens the benefit of copyright on the same basis as to its own citizens, or unless such nation is a party to an international agreement providing for reciprocity in copyright, to which the United States may become a party. The Librarian of Congress can enter copyright for foreigners only after a proclamation of the President of the United States, certifying the existence of either of the foregoing conditions.

The right of Americans to secure copyright abroad is unchanged by the new law, pending new legislation in foreign countries, or international agreements as to copyright between their Government and that of the United States.

Full Name of Proprietor required.

14. Every applicant for a copyright should state distinctly the full name and residence of the claimant, and whether the right is claimed as author, designer, or proprietor. No affidavit or witness to the application is required.

Office of the Librarian of Congress,
Washington, 1891.

FORM OF APPLICATION FOR COPYRIGHT REGISTRATION FOR WORKS MULTIPLIED BY MECHANICAL MEANS.

To the Register of Copyrights, Washington, D. C. *Date*, ——, 190 .

Inclosed find $ cents in Money Order, which you are requested to apply as follows:

(*a*) As the statutory fee for recording the accompanying title , $ cents.

(*b*) As the statutory fee for a copy under seal of such record (Certificate), fifty cents each, $ cents.

Name in full and address of the sender of the application.

This is to be filled only when one person acts as attorney or agent for another.

Name, ——

Street and Number, ——

Town and State, ——

Please read the following directions with care and fill in the required information with exactness in order to avoid delay in your copyright business.

1. Use only one of these eight designations: A, BOOK (if literary composition, in prose or verse, including newspaper article, magazine contribution, serial story, or single poem); B, PERIODICAL; C, MUSICAL COMPOSITION; D, DRAMATIC COMPOSITION; E, MAP or CHART; F, ENGRAVING, CUT, or PRINT; G, CHROMO or LITHOGRAPH; H, PHOTOGRAPH. N.B.—Use no other terms than the above.	1. Nature of Article.
2. Write an abbreviation of the accompanying printed title, sufficient to identify the latter. N.B.—One blank will serve for more than one title if the information asked for on pages 1 and 2 of the blank is equally applicable to each title.	2. Title of Work.

3. Write full name of person in whose name as "Author," "Designer," or "Proprietor" the claim of copyright is to be recorded, and state *legal* residence. N.B.—The notice of copyright on every copy of the article must have name of claimant printed in exactly the form written here, for example: Copyright, 190 , by A. B. (Here insert year.) (Here insert full name of claimant.)	3. Name of Claimant of Copyright, and Legal Residence. *Name*, _____ *Residence*, _____ (City.) (State.)

N.B.—In the case of a *book* the copies required to be deposited must "be printed from type set within the limits of the United States, or from plates made therefrom"; in the case of a *photograph*, "from negatives . . . made within the limits of the United States, or from transfers made therefrom," and in the case of *chromos* and *lithographs* from "drawings on stone made within the limits of the United States, or from transfers made therefrom."

4. If a *Book*, *Chromo*, *Lithograph*, *Photograph*, or *Periodical*, state in what *country* the article is to be printed or produced. This information is not *obligatory* in the case of other copyright articles, but is desirable.	4. Country in which the article is to be printed or produced.
5. If in Space 3 the name of the *author* is given, write opposite the word "author." If in Space 3 the name of the *proprietor* is given, write opposite the word "proprietor."	5. Form of Claim.
6. If the author, composer, or designer is living, state citizenship and residence; if dead, state nationality. If naturalized citizen of the United States, so state. It is not necessary to divulge the name and residence of any author who is not also the claimant of the copyright. It is *obligatory to indicate the nationality*. The meaning of the word "*nationality*" in this case is the country to which the applicant now owes allegiance by birth or *naturalization*.	6. Name of the { Author / Translator / Editor } and of the Country of which he is now a Citizen or Subject. *Name*, _____ [May be withheld if desired.] *Residence*, _____ [May be withheld if desired.] Nationality, { Name of country of which he is now a citizen or subject. } _____ [MUST BE GIVEN.]
7. State, if desired, specifically upon what copyright protection is claimed, *e.g.*, "Preface," "Notes and Emendations," "Illustrations," "New matter added to new edition," &c.	7. Specification of nature of claim of copyright.

8. Give name of person to whom reply is to be sent, together with full address.	8. Name and Address to whom Reply is to be Mailed. *Name,* _____ *Address,* _____ _____

One application form will serve for a number of titles, provided the information called for on pages 1 and 2 of the blank is equally applicable to each title.

N.B.—If application is desired to be made for an original work of art (Painting, Drawing, Statue, Statuary, or Model or Design intended to be perfected as a work of the fine arts), please use Application Form B, copies of which can be obtained upon request.

DIRECTIONS FOR FILLING UP APPLICATION BLANK.

State the exact amount of remittance for fee inclosed with application; but, if no money is sent with the application, leave the space blank.

Fee for entry of title of production of a citizen of the United States is 50 cents; for production of a qualified foreigner, $1. Fee for certificate, 50 cents additional in either case.

All remittances should be made payable to the Register of Copyrights.

Remittances should always be made preferably by money order, or by express order, or bank draft. Currency or coin should not be sent, and cheques only upon special arrangement with the Register of Copyrights. *Postage stamps cannot be received for copyright fees.*

The law explicitly requires, in addition, the transmission of a "printed" copy of the title, which must be sent with this application in order to ensure entry of copyright. If type-written title is sent, it will be used, but at the risk of the applicant. No entry can be made upon a written title.

Give name of claimant in full; initials are not always sufficient for identification.

Write legibly the full name and give full address (with name of place, street, and number) of applicant.

Always send the regular printed title-page when possible.

Use this blank only for the following productions: Book (meaning thereby a literary composition in prose or verse, not a blank book, account book, or minute book, &c., but including a newspaper article, magazine contribution, serial story, or a single poem, each of which should be designated in the application by the term "Book"); Periodical; Musical Composition (when music, or words and music, are desired to be protected); Dramatic Composition; Map or Chart (only when the article is a chartographical work, not a chart in the modern sense, *i.e.*, a sheet exhibiting information in a methodical or tabulated form); Engraving, Cut, or Print (only when a work of art, sold or exchanged for its artistic value, and not when merely an advertisement or a print relating to an article of manufacture); Chromo or Lithograph; and Photograph.

If the article for which copyright is desired cannot reasonably be described by any of the terms stated above, it is not such an article as can be registered in the Copyright Office as a preliminary to copyright protection.

In the case of music, preferably the printed title cover of the music should be sent when this contains a complete title, with names of author of the words and composer or arranger of the music, and the instrumentation. But if this cannot

be done, the complete title should be typewritten on page 3 of the blank. If several typewritten titles are to be sent with one application, they can be put upon page 3 of the application blank, 1½ inches apart, so as to allow the date and number stamp to come between. Typewritten titles are accepted upon the sole responsibility of the sender.

The term "Musical Composition" should be used only when the music is desired to be protected or the words and music together. If the words only are desired to be protected, the term "Book" should be used in filling up the application.

[Copies of the blank application forms can be obtained upon request. Please make requests for blank forms in separate communications, not as part of a letter relating to other copyright business.

For works of art use application form B. For renewal use application form C.]

TITLE.

In the case of a book in more than one volume, a separate title-page for each volume must be sent. Only one copy of each title is required. The law distinctly specifies a printed title. If a typewritten title is sent, it is at the claimant's risk.

No entry can be made on a written title.

Insert on this page *printed* or typewritten title or titles.

If several typewritten titles are to be sent with one application, they can be put upon this page of the application blank, but should be 1½ inches apart, so as to allow the date and number stamp to come between; or they can be on separate sheets of paper. If necessary, additional sheets of titles may be inserted between pages 2 and 3, but it is always preferable to send the regular printed title-pages.

INFORMATION CIRCULAR NO. 3.

Copyright Fees.

Library of Congress,
Copyright Office,
Washington, D.C.

The Copyright fees prescribed by law are as follows:

Entries and Certificates.—For recording each title of a book or other article, the production of a citizen or resident of the United States, the charge is fifty (50) cents. If a Certificate of copyright (*i.e.*, a certificate of the entry of the title) is desired, there is an additional charge of fifty (50) cents, or $1.00 in all. One certificate can be made to include only one title.

For recording each title of a book or other work, the production of a person *not* a citizen or resident of the United States, the charge is $1.00. This fee of $1.00 is required to be paid for recording the title of every work whose original author or producer is "a person not a citizen or resident of the United States," whether the proprietor of the copyright is or is not a citizen or resident of the United States. A Certificate of such record requires the payment of fifty (50) cents additional, or $1.50 in all.

Copies of Record.—For every copy under seal of the record of entry of title, the charge is fifty (50) cents.

Assignments.—For recording and certifying an instrument of writing for the Assignment of a copyright, the charge is $1.00; and for each copy of an Assignment $1.00.

Receipts for Two Copies.—For a certified receipt for the deposit of two copies, the charge is fifty (50) cents.

In no case should any postage stamps or stamped envelopes be sent for reply, as all Copyright Office mail is forwarded under a Government frank.

All remittances should be made by money order, payable to the Register of Copyrights.

Internal Revenue stamps are not required.

THORVALD SOLBERG,
Register of Copyrights.

INFORMATION CIRCULAR No. 27.

Articles Subject of Copyright.

The Copyright Statutes enumerate the classes of articles which are subjects of copyright protection, and no article can be registered in this office unless it is possible to designate it as belonging to one or the other of the articles or classes of articles named in the law.

These articles are:

1. *Book.*—By the term "book" in the copyright law is understood a *literary composition*. All copyright legislation is based on the provision of the Constitution (Art. 1, Sect. 8) granting to Congress the power to legislate to protect the *writings of authors*. For this reason, the mere fact that an article is *printed*, such as a mere list of words, or a sheet of disjointed phrases or sentences, or a blank form or a blank book, does not enable it to obtain protection. Nor does the fact that an article is made up to *resemble* a book in form justify its registration for copyright protection. It must be a book in literary substance.

A book, in order to obtain copyright protection, must be printed from type set within the limits of the United States, or from plates made therefrom.

2. *Periodical.*—This term includes all magazines, newspapers, or serial publications partaking of the nature of a periodical.

3. *Map or Chart.*—The term "chart" in the copyright law means a form of map, a cartographical work, and cannot, therefore, be used to designate what is ordinarily termed a chart, nor any such articles as dress patterns, or sheets designed for use in dressmaking, &c.

4. *Dramatic Composition.*—This term must be understood to mean a literary composition in dramatic form, and cannot be understood to include mere stage business, specialty acts, stage names, stage curtains, scenarios, &c.

5. *Musical Composition.*—Intended to cover *words and music*. If the *words* only of a song are desired to be protected, the designation "book" should be used.

6. *Engraving, Cut, or Print.*—These terms are defined in the law to be applied only to pictorial illustrations of works connected with the *Fine Arts*, that is to say, to articles sold or exchanged for their artistic value. Prints which pertain to a specific, designated article of manufacture cannot be registered in this office, but should be entered for copyright protection at the Patent Office under the Act of June 18, 1874. See Circular No. 24.

7. *Photograph.*—A photographic print, in order to be entitled to protection under the copyright law, must be printed from a negative made within the limits of the United States, or from transfers made therefrom.

8. *Chromo or Lithograph.*—Chromos and lithographs, in order to obtain copyright protection, must be made from drawings on stone or from transfers therefrom made within the limits of the United States.

9. *Photographic Negative.*

10. *Painting.* 11. *Drawing.* 12. *Statuary.*

13. *Model or Design intended to be perfected as work of the Fine Arts.*

Only such productions as, by reasonable interpretation, can be classed under any one of the articles named above can therefore be registered for copyright protection.

THORVALD SOLBERG,
Register of Copyrights.

INFORMATION CIRCULAR No. 35.

General Instructions.

The formalities required by law in order to secure copyright entry are very simple. *No statement is necessary except the direct application for copyright* registration. No papers are required to be sworn to, nor any certificate to be furnished.

The law prescribes three simple steps as preliminary to copyright protection. Each of these steps should be taken exactly as the law requires; otherwise no protection is secured. These three steps are:

Step A.—Registration of title or description in this office. See below. This step can be taken prior to going to press, if desired.

Step B.—Deposit of two copies of the book or other article not later than the day of publication in this or any foreign country. In the case of paintings, drawings, statuary, or models or designs for works of art, a photograph of the article is to be sent in lieu of the two copies. The copyright law explicitly enacts that "In the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom."

No manuscript copies of books or music and no original drawings or paintings should be sent to this office.

The *printed copies or the photograph should be marked with the name and* address of the sender, should be addressed to the Register of Copyrights, Washington, D. C., and should be deposited in the mails before any copies have been distributed to the public, with postage fully prepaid or under the franking label supplied by this office. The law requires postmasters to give receipts for titles and copies on request.

Steps A and B are prerequisites to any copyright protection. They may be taken at the same time, if desired, but not later than the day of publication. If taken together, all matter relating thereto, including title, copies or photograph, application, and fee, should be sent in one parcel.

Step C.—Notice of Copyright should be printed in every copy distributed, in one or the other of the following forms: "Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington"; or, "Copyright, 19—, by A. B."

In the case of a book this notice should be printed on the title-page or the page immediately following. In the case of other articles the notice should be placed upon some visible portion of the article or of the substance on which the article is mounted.

No copyright can be defended against infringement unless the notice of copyright is given as above directed. The notice should not vary from the form prescribed. The date given in the notice should be the same as the year date of the entry obtained by taking "Step A" above described.

REGISTRATION.

No copyright registration can be secured for an article not distinctly named in the copyright law as subject to copyright protection; but for any articles named in the law as subject to protection a compliance with the following directions will secure the registration of the copyright, referred to above as "Step A."

1. Fill up, in accordance with the directions printed upon it, the copyright application blank supplied by this office upon request.

For articles multiplied by mechanical means, such as a book, periodical, musical composition, dramatic composition, map or chart, engraving, cut or print

chromo or lithograph, or a photograph, use application form "A," supplied by this office upon request (*a*).

For a painting, drawing, statue, statuary, model or design intended to be perfected as a work of the fine arts, use form "B."

2. Attach to the application a printed or typewritten title of the book, photograph, music, or other article. Written titles are not legal and cannot be accepted. In the case of paintings, drawings, statuary, and models of designs intended to be perfected as works of art, a brief *description* of the article must be filed with the application, in lieu of the title.

3. Forward to this office the application, with a money order or express order for the exact amount of the fee, payable to the Register of Copyrights.

4. Send *two* copies of the article, or the one photograph of a work of art (see "Step B" above), not later than the day of publication, before any other copies have been distributed.

5. Send application, title, fee, and, when possible, the two copies of the article, or, in the case of an original work of art, the photograph, in one parcel, using the addressed franked label furnished by this office upon request.

Address all communications: The Register of Copyrights, Copyright Office, Library of Congress, Washington, D. C.

THORVALD SOLBERG,
Register of Copyrights.

(*a*) See *ante*, p. cxl.

APPENDIX (E).

FORMS USED AT STATIONERS' HALL.

(*Form of requiring Entry of Proprietorship.*)

To the registering officer appointed by the Stationers' Company.

I, of do hereby certify, that I am the proprietor of the Copyright of a Book, intituled ; and I hereby require you to make entry in the Register Book of the Stationers' Company of my Proprietorship of such Copyright, according to the particulars underwritten.

(*Every particular given must be clearly written.*)

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.

Dated this day of , 190 ..

Witness, . (Signed) .

N.B.—In filling up the above form special care must be taken to insert the correct title of the Book, the name of the *first publisher*, and the *exact day* of first publication. All names should be written in full.

A stamped and addressed envelope must be enclosed with all communications to which an answer is required.

COPYRIGHT REGISTRY.

Instructions for Registration of Books first published within the British Dominions under the provisions of the Copyright Acts, 5 *&* 6 *Vict. c.* 45, *and* 49 *&* 5 *Vict. c.* 33.

Book.—The term "Book" means and includes every *volume*, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan, separately published.

Term of Copyright in Books.—If published in lifetime of author, then forty-two years from publication or life of author and seven years from his death, whichever shall be the longer term.

If published after author's death, then proprietor has copyright for forty-two years from first publication.

The copyright in articles in encyclopædias, reviews, magazines, periodical works, or works published in a series of books or parts, belongs to the proprietor of the work when such articles have been composed upon the terms that the copyright shall belong to him and shall have been actually paid for by him; but after twenty-eight years from first publication the right of publishing in separate form such articles as have been published in reviews, magazines, or other periodical works of a like nature reverts to the author; and during such twenty-eight years the proprietor may not publish separately without the previous consent of the author or his assigns. Authors may by contract reserve to themselves the right of publishing in a separate form before the expiration of the twenty-eight years.

Necessity for Registration.—Copyright is created by the Statute, and does not depend upon registration, which is permissive only and not compulsory, but no proprietor of copyright in any book can take any proceedings in respect of any infringement of his copyright unless he has, before commencing his proceedings, registered his book.

Mode of Registration.—A proprietor of copyright desiring to register at Stationers' Hall must lodge there a demand signed by him and witnessed, in the form printed on the back hereof, *together with a* fee of 5*s.* for each entry.

Fee 5*s.*

Special care should be taken that the full and proper title of the book, and the correct *day, month, and year of first publication* are entered, as any error or omission may invalidate the entry.

A book cannot be registered *before it is published.*

A proprietor of the copyright in an encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, will be entitled to all the benefits of registration upon his registering the first volume, number, or part.

Music.—Proprietors of copyright in musical compositions entitled to, and desirous of retaining the right of, public representation or performance, must print on the title-page of every copy a notice to the effect that the right of public representation or performance is reserved.

Assignments.—Registered copyrights, or any share or shares thereof, may be assigned, without payment of any stamp duty, by the registered proprietor lodging, at Stationers' Hall, a demand signed by him in the form prescribed by the Statute, together with a fee of 5*s.* Forms of Assignment can be obtained at Stationers' Hall.

Certificate 5*s.* *Certified Copies* of entries are supplied on payment of a fee of 5*s.* each, and such copies are *primâ facie* proof of the matters alleged therein.

Search 1*s.* *Searches.*—A printed Lexicographical Index of all Literary Works registered between 1842 and 1902 is now provided for the use of persons desirous of searching the Book Register. The statutory fee for each entry searched for is 1*s.*

Public Libraries.—A copy of every book published (whether registered at Stationers' Hall or not) and of any second or subsequent edition containing additions and alterations, must be delivered at, or forwarded by post or rail carriage prepaid to, the British Museum immediately after publication; and four copies should be delivered at Stationers' Hall for the Public Libraries at Oxford, Cambridge, Edinburgh, and Dublin.

Newspapers.—Proprietors registering newspapers at Stationers' Hall should also register at Somerset House, pursuant to the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60). This Act does not extend to Scotland. For forms apply to the Registrar, Companies' Registration Office, Somerset House, London, W.C.

British Possessions.—Books first published in any British possession which does not provide for registration should be registered at Stationers' Hall.

International Copyright.—Under the provisions of the Berne Convention, books copyright in Great Britain are protected in the following countries:—Belgium, France, Germany, Italy, Spain, Switzerland, Tunis, Hayti, Luxembourg, Monaco, Norway, Japan, and Denmark (including the Faröe Islands, but excluding Iceland, Greenland, and the Danish Antilles) (*a*).

(*a*) Add now, Sweden.

United States, &c.—To secure copyright in Great Britain of works intended to be published in America and other foreign countries (except the kingdoms and States represented in the Austrian Reichsrath) which have not adopted the provisions of the Berne Convention, simultaneous publication in both countries is essential, and the work should be registered at Stationers' Hall, and one copy delivered to the British Museum, and four copies lodged at Stationers' Hall for the Public Libraries. The name of the *British* publisher and place of publication must in all cases be inserted in the second column of the form on the other side.

Foreign Reprints.—Proprietors of books first composed, or written, or printed in the United Kingdom, desiring to prevent the importation of foreign reprints, are advised to give notice in writing to the Commissioners of Customs, accompanied by a statutory declaration that the copyright subsists, and when it will expire. Registration at Stationers' Hall is also necessary before duties can be levied for the benefit of the proprietor of copyright on foreign reprints of British copyright works imported into the Bahamas, Barbados, Bermuda, British Guiana, Cape of Good Hope, Grenada, Jamaica, Natal, Nova Scotia, Newfoundland, Prince Edward Island, St. Christopher, St. Lucia, and St. Vincent.

Applicants not conversant with the mode of registration are recommended in all cases to forward with the demand for registration a copy of the book to be registered for comparison before entry, as no alteration can be made in the "Register," or any error corrected, except by an Order of the High Court of Justice, or one of the Judges thereof.

Forms used at Stationers' Hall can be obtained on application, price 1*d.* each.

Postage stamps cannot be received in payment of fees.

Post Office and Postal Orders to be made payable, and all communications to be addressed, to *The Registrar, Stationers' Hall, London, E.C.*

Office hours 10 *a.m. to* 4 *p.m.* *Saturdays* 10 *a.m. to* 2 *p.m.*

STATIONERS' HALL. *December* 1903.

(*Form of Concurrence of the Party Assigning in any Book previously Registered.*)

To the Registering Officer appointed by the Stationers' Company.

I, of , being the Assigner of the Copyright of the Book hereunder described, do hereby require you to make Entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
*** The date of the previous Registration or Assignment must be given here . .		

Dated this day of , 19 .

(Signed)

N.B.—The title of the Book must correspond precisely with that in the original entry on the "Register," and the address of the assigner and assignee respectively be inserted in the proper column after his name. All names to be written in full.

A stamped and addressed envelope to be enclosed with all communications to which an answer is required.

COPYRIGHT REGISTRY.

Instructions for Assignment of Copyright in Books under the provisions of the Copyright Act, 5 & 6 Vict. c. 45.

Entry 5s. The registered proprietor of copyright in a Book may transfer his copyright, or any share or shares thereof, *without payment of any stamp duty*, by lodging, at Stationers' Hall, a demand signed by him in the form prescribed by the Statute, and printed on the back hereof, together with a fee of 5*s*.

Special care should be taken that the correct particulars are entered, as any error or omission may invalidate the entry, and no alteration can be made in the "Register," or any error corrected, except by an Order of the High Court of Justice, or one of the Judges thereof.

Certificate 5s. *Certified Copies* of entries are supplied on payment of a fee of 5*s*. each, and such copies are *primâ facie* proof of the matters alleged therein.

Search 1s. A printed Lexicographical Index of all Literary Works registered between 1842 and 1897 is now provided for the use of persons desirous of searching the Book Register. The statutory fee for each entry searched for is 1*s*.

Forms can be obtained at Stationers' Hall, price 1*d*. each.

Postage stamps cannot be received in payment of fees.

Post Office and Postal Orders to be made payable, and all communications to be addressed, to *The Registrar, Stationers' Hall, London, E.C.*

Office hours 10 *a.m. to* 4 *p.m. Saturdays* 10 *a.m. to* 2 *p.m.*

STATIONERS' HALL, *October* 1903.

(*Form of Requiring Entry of Proprietorship of Dramatic Piece or Musical Composition.*)

To the Registering Officer appointed by the Stationers' Company.

I, of , do hereby certify, That I am the proprietor of the *Liberty of Representation or Performance of a Dramatic Piece or Musical Composition*, intituled , and I hereby require you to make entry in the Register Book of the Stationers' Company of my Proprietorship of such *Liberty of Representation or Performance*, according to the particulars underwritten.

(*Every particular given must be clearly written.*)

Title of Dramatic Piece or Musical Composition.	Name and Place of Abode of the Author or Composer.	Name and Place of Abode of the Proprietor of the Sole Liberty of Representation or Performance.	Time and Place of First Representation or Performance.

Dated this day of , 19 .

Witness . (Signed) .

N.B.—*All names to be written in full.*

A stamped and addressed envelope to be enclosed with all applications requiring an answer.

COPYRIGHT REGISTRY.

DRAMATIC PIECES AND MUSICAL COMPOSITIONS.

Instructions for Registration of the right to represent and perform Dramatic Pieces and Musical Compositions, see 3 & 4 Will. IV. c. 15; and 5 & 6 Vict. c. 45.

The Right to represent or perform a dramatic piece or musical composition is a right distinct from the copyright in a book containing or consisting of such dramatic piece or musical composition, and no assignment of the copyright of any such book conveys any right of representation or performance, unless so specified; and by the 22nd section of 5 & 6 Vict. c. 45, an entry of every such assignment should be made in the Registry Book.

The Author or Assignee of the Author of any tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment, or musical composition, has, as his own property, the sole liberty of representing or performing, or causing or permitting to be represented or performed in public, any such dramatic piece or musical composition for forty-two years from the first public representation or the life of the author, and seven years from his death, whichever shall be the longer.

Mode of Registration.—The proprietor of the right of representation or performance of any dramatic piece or musical composition desiring to register his right at Stationers' Hall, must lodge there, for entry in the "Register," a statement of the particulars, signed by him and witnessed, in the form on the back hereof (*a*), with a fee of 5*s*. Entry 5*s*.

Special care must be taken to give the precise particulars required, including the day, month, and year of the first representation or performance, as any error may invalidate the entry, and no alteration can be made in the "Register," or any error corrected, except by an Order of the High Court of Justice, or one of the Judges thereof.

Registration cannot be effected until after the date of the first public representation or performance.

Assignments may be made by the registered proprietor of his interest, or any portion thereof, by filling up and lodging at Stationers' Hall, for entry in the "Register," a statement signed by him in the form prescribed by the Statute, together with a fee of 5*s*.

Certified Copies of entries can be obtained on payment of a fee of 5*s*., and such copies are *primâ facie* proof of the matters alleged therein. Certificate 5*s*.

Music.—Proprietors of copyright in printed musical compositions entitled to, and desirous of retaining, the right of public representation or performance, must print on the title-page of every copy a notice to the effect that the right of public representation or performance is reserved.

Searches.—The "Register" can be inspected on payment of a fee of 1*s*. for each entry searched for. Search 1*s*.

Forms of entry and assignment can be obtained at Stationers' Hall, price 1*d*. each.

Postage stamps cannot be received in payment of fees.

Post Office and Postal Orders to be made payable, and all communications to be addressed, to *The Registrar, Stationers' Hall, London, E.C.*

Office hours 10 *a.m. to* 4 *p.m. Saturdays* 10 *a.m. to* 2 *p.m.*

STATIONERS' HALL, *March* 1903.

(*a*) See previous page.

(*Form of Concurrence of the Party Assigning any Piece or Composition previously Registered.*)

To the Registering Officer appointed by the Stationers' Company.

I, of , being the Assigner of the *Liberty of Representation or Performance of a Dramatic Piece or Musical Composition*, hereunder described, do hereby require you to make Entry of the Assignment of such *Liberty of Representation or Performance*.

Title of Dramatic Piece or Musical Composition.	Assigner of the Sole Liberty of Representation or Performance.	Assignee of the Sole Liberty of Representation or Performance.

*** The date of the previous Registration or Assignment must be given here . .

Dated this day of , 19 .
Witness . (Signed) .

A stamped and addressed envelope to be enclosed with all communications to which an answer is required.

COPYRIGHT REGISTRY.

Instructions for Assignment of the Liberty of Representation or Performance of Dramatic Pieces and Musical Compositions under the Provisions of the Copyright Acts.

Entry 5s. The registered proprietor of the liberty of representation or performance of a dramatic piece or musical composition may transfer such liberty of representation or performance, *without payment of any stamp duty*, by lodging, at Stationers' Hall, a demand signed by him in the form prescribed by the Statute, and printed on the back hereof, together with a fee of 5*s*.

N.B.—The title of the dramatic piece or musical composition must correspond precisely with that in the original entry on the "Register," and the address of assigner and assignee respectively must be inserted in the proper column after his name. All names to be written in full.

Special care should be taken that the correct particulars are entered, as any error or omission may invalidate the entry, and no alteration can be made in the "Register," or any error corrected, except by an Order of the High Court of Justice, or one of the Judges thereof.

Certificate 5s. *Certified Copies* of entries are supplied on payment of a fee of 5*s*. each, and such copies are *primâ facie* proof of the matters alleged therein.

Search 1s. A printed Lexicographical Index of all Literary Works registered between 1842 and 1897 is now provided for the use of persons desirous of searching the Book Register. The statutory fee for each entry searched for is 1*s*.

Forms can be obtained at Stationers' Hall, price 1*d*. each.

Postage stamps cannot be received in payment of fees.

Post Office and Postal Orders to be made payable, and all communications to be addressed, to *The Registrar, Stationers' Hall, London, E.C.*

Office hours 10 *a.m. to* 4 *p.m. Saturdays* 10 *a.m. to* 2 *p.m.*

STATIONERS' HALL, *January* 1902.

Memorandum for Registration under Copyright (Works of Art) Act.

To the Registering Officer appointed by the Stationers' Company.

I, of , do hereby certify, That I am entitled to the Copyright in the undermentioned Work; and I hereby require a Memorandum of such Copyright [*or*, the Assignment of such Copyright] to be entered in the Register of Proprietors of Copyright in Paintings, Drawings, and Photographs, kept at Stationers' Hall, according to the particulars underwritten.

(*Every particular given must be clearly written.*)

Description of Work.	Date of Agreement or Assignment.	Names of Parties to Agreement or Assignment.	Name and Place of Abode of Proprietor of Copyright.	Name and Place of Abode of Author of Work.

Dated this day of , 19 .

(Signed)

N.B.—In filling up the first column the description should commence thus: "Painting," "Drawing," or "Photograph," as the case may be. All names in the third, fourth, and fifth columns should be written in full.

In all cases where a Painting, Drawing, or Negative of a Photograph is transferred for the first time by the owner to any other person, the Copyright will cease to exist, unless *at or before the time of such transfer* an agreement in writing be signed by the transferee reserving the Copyright to the owner, or by the owner transferring the Copyright to the transferee, as may be the intention of the parties; and the date of such agreement and names of parties must be inserted above, or registration will be no protection.

The second and third columns are only to be used when there is a written agreement or assignment.

A stamped and addressed envelope to be enclosed with all communications requiring an answer.

COPYRIGHT REGISTRY.

Fine Arts.

Instructions for Registration of Paintings, Drawings, and Photographs, under 25 & 26 Vict. c. 68; and 49 & 50 Vict. c. 33.

Copyright—Under the provisions of 25 & 23 Vict. c. 68 (The Fine Arts Copyright Act, 1862), the author, being a British subject, or resident within Her Majesty's dominions, of every original painting, drawing, or photograph (not sold before 29th July, 1862), has the exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means or size, whether made in the Queen's dominions or not, for his life and seven years after; but any other person may represent the scene or object represented by such painting, drawing, or photograph. The copyright of any painting, drawing, or negative of a photograph made for or on behalf of any person other than the author for a good or a valuable consideration

belongs to such person. Upon transferring for the first time the ownership of any painting, drawing, or photograph, the copyright must be transferred or reserved by agreement in writing, or it will cease to exist.

Necessity for Registration.—No proprietor of copyright is entitled to the benefit of the Act until registration, and no action can be maintained nor any penalty recovered in respect of anything done before registration.

Entry, 1*s.* *Registration.*—Every copyright must be registered by the proprietor delivering or sending by post prepaid to the Registrar, Stationers' Hall, a signed memorandum of such copyright, with a fee of 1*s.* Special care should be taken to describe the work as a "Painting," "Drawing," or "Photograph," as the case may be, adding a short description of the nature and subject of the work, and annexing, whenever practicable, a sketch, outline, or unmounted photograph. The name of the actual Artist should be inserted as Author of work.

Assignments of copyright under the Act must be made by some note or memorandum in writing signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing, and must be registered at Stationers' Hall. This is effected by lodging there for entry in the "Register" a memorandum signed by the assignee, with a fee of 1*s.*

The memorandum for registration of a copyright or assignment must be in the form printed on the back hereof (*a*).

Certificate 5*s.* *Certified Copies* of entries can be obtained on payment of a fee of 5*s.*, and such copies are *primâ facie* proof of the matters alleged therein.

Colonial Fine Arts.—By the International Copyright Act, 1886 (49 & 50 Vict. c. 33), the Fine Arts Copyright Act, 1862, is made applicable to paintings, drawings, and photographs first produced in a British possession, registration of the copyright in London not being required if the law of such possession provides for the registration of such copyright.

Search 1*s.* *Searches.*—The "Register" can be inspected on payment of a fee of 1*s.* for each entry searched for.

Applicants not conversant with the mode of registration are recommended in all cases to forward with the demand for registration a copy of the Painting, Drawing, or photograph to be registered, that they may be compared before entry, as no alteration can be made in the "Register," or any error corrected, except by an Order of the High Court of Justice, or one of the Judges thereof.

Postage stamps cannot be received in payment of fees.

Post Office and Postal Orders to be made payable, and all communications to be addressed, to *The Registrar, Stationers' Hall, London, E.C.*

Office hours 10 *a.m. to* 4 *p.m. Saturdays* 10 *a.m. to* 2 *p.m.*

STATIONERS' HALL, *March* 1904.

(*a*) See preceding page

APPENDIX (F).

DESIGNS RULES, FORMS, &c.

DESIGNS RULES, 1890.

By virtue of the provisions of the Patents, Designs, and Trade Marks Acts, 1883 to 1888, the Board of Trade do hereby make the following Rules:

Preliminary.

1. These Rules may be cited as the Designs Rules, 1890, and shall come into operation from and immediately after the 31st day of March, 1890.

Interpretation.

2. In the construction of these Rules any words herein used defined by the said Acts shall have the meanings thereby assigned to them respectively. Interpretation.

Fees.

3. The fees to be paid under the said Act, so far as it relates to applications for and registration of designs, shall be the fees specified in the First Schedule hereto. Fees.

Forms.

4. An application for the registration of a design shall be made in the Form E. or Form O. in the Second Schedule hereto. The remaining forms in such Schedule may be used in all cases to which they are applicable (*a*). Forms.

Classification of Goods.

5. For the purposes of the registration of designs and of these Rules, goods are classified in the manner appearing in the Third Schedule hereto. Classification of goods.

Application for Registration.

6. All communications between an applicant for the registration of a design and the Comptroller or the Board of Trade, as the case may Agents.

(*a*) See now Rules of 1893.

be, may be made by or through an agent duly authorised to the satisfaction of the Comptroller (*a*).

Address of Comptroller.

7. An application for the registration of a design shall, with the prescribed fee, be left at the Patent Office, Designs Branch, or be sent prepaid by post, addressed to the Comptroller at the Patent Office (Designs Branch), 25, Southampton Buildings, Chancery Lane, London.

Size of papers.

8. An application for the registration of a design, and all drawings, sketches, photographs, or tracings of a design, and all other documents sent to or left at the Patent Office (Designs Branch), or otherwise furnished to the Comptroller or to the Board of Trade, shall be written, printed, copied, or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than one inch and a half on the left-hand part thereof, and the signature of the applicant or agents thereto must be written in a large and legible hand.

The Comptroller may in any particular case vary the requirements of this rule as he may think fit.

Sketches and drawings.

9. An application for the registration of a design shall be accompanied by a sketch or drawing, or by three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable.

Nature of design.

When sketches, drawings, or tracings are furnished they must be fixed.

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs shall be furnished.

Notice of registration.

10. If the Comptroller determines to register a design, he shall, as soon as may be, send to the applicant a certificate of such registration in the prescribed form, sealed with the seal of the Patent Office.

Applications may be sent by post.

11. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Exercise of Discretionary Powers.

Hearing by Comptroller.

12. Before exercising any discretionary power given to the Comptroller by the said Acts adversely to the applicant for registration of a design, the Comptroller shall (if so required by the applicant within one

(*a*) See substituted rule, Rule 2 of Rules of 1898,

month from the date of the Comptroller's objection) give the applicant an opportunity of being heard personally or by his agent by sending the applicant ten days' notice of a time when he may be so heard.

Hearing by Comptroller.

13. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Notification of Comptroller's decision.

14. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

Appeal to the Board of Trade.

Notice of appeal to Board of Trade.

15. Where the Comptroller refuses to register a design, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Designs Branch, a notice of such his intention.

Statement on appeal.

16. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof.

Notice to Secretary of Board of Trade.

17. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London.

Directions by Board of Trade.

18. The Board of Trade may thereupon give such directions (if any) as they may think fit for the purpose of the hearing of the appeal for the Board of Trade.

Notice of time of hearing.

19. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal shall be given to the Comptroller and the applicant.

Register of Designs.

Registering design.

20. Upon the sealing of a certificate of registration the Comptroller shall cause to be entered in the register of designs, the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day shall be deemed to be the date of the registration.

Subsequent proprietors.

21. Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request for the entry of his name in the register as such proprietor of the design, or as having acquired such right, as the case may be (hereinafter called the claimant), shall be addressed to the Comptroller, and left at the Patent Office, Designs Branch.

Signature to request.

22. Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor; and

in the case of a firm or partnership, by some one or more members of such firm or partnership, or, in either case, by his or their agent respectively duly authorized to the satisfaction of the Comptroller; and in the case of a body corporate, by their agent authorized in like manner.

Particulars in request.

23. Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be.

Statutory declaration with request.

24. Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request.

Proof of title if required.

25. The claimant shall furnish to the Comptroller such other proof of title as he may require for his satisfaction.

Corporate name.

26. A body corporate may be registered as proprietor by its corporate name.

Notice to Comptroller of application to rectify Register.

27. Four days' clear notice of every application to the Court under section 90 of the Patents, Designs, and Trade Marks Acts, 1883 to 1888, for rectification of the Register of Designs, shall be given to the Comptroller.

Notice of order of Court.

28. Where an order has been made by the Court, under section 90 of the said Acts, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Power to Dispense with Evidence.

Comptroller's discretion as to evidence.

29. Where under these Rules any person is required to do any act or thing, or to sign any document, or make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Amendments.

30. Any document, drawings, sketches, or tracings for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which, in the opinion of the Comptroller, may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and upon such terms as he may direct. Amendments.

Enlargement of Time.

31. The time prescribed by these Rules for doing any act or taking any proceeding thereunder may be enlarged by the Comptroller, if he think fit, and upon such terms as he may direct. Enlargement of time.

Marking Goods.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the Third Schedule hereto, cause each such article to be marked with the abbreviation "R" and the number appearing on the certificate of registration, and shall, if such article is included in the classes thirteen or fourteen in the Third Schedule hereto, cause each such article to be marked with the abbreviation "REG" and the number appearing on the certificate of registration (*a*). Registration mark.

Inspection.

33. On such days and during such hours as the Comptroller shall from time to time determine and notify by a placard posted at the Patent Office any person paying the prescribed fee may, on production of the number of any design of which the copyright has ceased, inspect such design, and any person paying the prescribed fee may take a copy or copies of such design. Office hours.

Certificate by Comptroller.

34. Where a certificate is required for the purpose of any legal proceeding or other special purpose as to any entry, matter, or thing which the Comptroller is authorized by the said Act or these Rules to make or do, the Comptroller may, on a request in writing and on payment of the prescribed fee, give such certificate, which shall also specify on the face of it the purpose for which it has been requested as aforesaid. Certificate legal proceeding.

Searches on Production of Sketch of Design.

35. The Comptroller may, on receipt of the prescribed fee, make searches among the designs registered at the Patent Office, and inform Search.

(*a*) See now Rule 5 of Rules of 1893.

any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with or an obvious imitation of any registered design applied to such goods of which the copyright is still existing.

Industrial and International Exhibitions.

Notice of exhibition.

36. Any person desirous of exhibiting a design, or any article to which a design has been applied, at an industrial or international exhibition, or of publishing a description of a design during the period of the holding of the exhibition, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice in writing of his intention to exhibit the design or article, or to publish a description of the design, as the case may be.

For the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant shall furnish to the Comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the Comptroller may in each case require.

Repeal.

Repeal of previous Rules.

37. All general rules as to the registration of designs heretofore made by the Board of Trade under the Patents, Designs, and Trade Marks Acts, 1883 to 1888, and in force on the 31st day of March, 1890, shall be, and they are hereby, repealed, as from that date, without prejudice, nevertheless, to any proceeding which may have been taken under such Rules.

M. E. HICKS-BEACH,
President of the Board of Trade.

31*st March*, 1890.

SCHEDULES.

FIRST SCHEDULE.

Fees.

	£	*s.*	*d.*
1. On application to register one design to be applied to single articles in each class except classes 13 and 14	0	10	0 (*a*)
2. On application to register one design to be applied to single articles in classes 13 and 14	0	1	0 (*a*)
3. On application to register one design to be applied to a set of articles for each class of registration	1	0	0 (*a*)
4. On notice of appeal to Board of Trade against refusal of Comptroller to register	1	0	0

(*a*) *See* now Rules of 1893.

		£	s.	d.
5.	Copy of certificate of registration, each copy	0	1	0
6.	On request for Certificate of Comptroller for legal proceedings or other special purpose	0	5	0
7.	On request to enter name of subsequent proprietor	same as registration fee.		
8.	On notice to Comptroller of intended exhibition of an unregistered design	0	5	0
9.	Inspection of design in any case in which inspection is permitted by the Patents, Designs, and Trade Marks Acts, 1883 to 1888, and the Designs Rules thereunder, for each quarter of an hour	0	1	0
10.	Copy of one such design	cost according to agreement.		
11.	On request to correct clerical error	0	5	0
12.	On request for search under section 53	0	5	0
13.	On request to enter new address	0	5	0
14.	For office copy, every 100 words	0	0	1
		(but never less than 1s.)		
15.	For certifying office copies, MSS. or printed	0	1	0

NOTE.—The term "set" to include any number of articles ordinarily on sale together irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

M. E. HICKS-BEACH.

President of the Board of Trade.

Approved,

R. E. WELBY,

For the Lords Commissioners of Her Majesty's Treasury.

31*st March*, 1890.

SECOND SCHEDULE.

FORMS.

Form of Application to Register.
" Appeal to Board of Trade.
" Certificate of Registration.
" Application for Copy of Certificate of Registration.
" Request for Certificate for use in Legal Proceedings.
" Certificate for use in Legal Proceedings.
" Request to enter Name of Subsequent Proprietor.
" Notice of intending Exhibition of Unregistered Design.
" Request for Correction of Clerical Error or for entry of New Address.
" Request for search under Section 53.
Application to Register for a set of Articles.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

E.

Designs.

APPLICATION FOR REGISTRATION OF DESIGN IN CLASSES .

You are hereby requested to register the accompanying design in Class , in the name of (*a*) of , who claims to be the proprietor thereof, and to return the same to .

Statement of nature of design (*b*) .

(*c*)

(Signed) .

Dated the day of , 189 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) Here insert legibly the name, address, and description of the individual or firm.

(*b*) Such as whether it is applicable for the pattern or for the shape.

(*c*) To be signed by the applicant.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

F.

Designs.

APPEAL TO BOARD OF TRADE ON REFUSAL OF COMPTROLLER TO REGISTER A DESIGN.

[*To be accompanied by an unstamped copy.*]

SIR,

I hereby appeal against your decision upon my application to register and beg to submit my case (*a*) for the decision of the Board of Trade.

I am, Sir,
Your obedient servant,

The Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) The statement of the case to be written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

G.

Seal of Patent Office.

CERTIFICATE OF REGISTRATION OF DESIGN.

(No. No. .)

Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

This is to certify that the Design of which this is a copy was registered this day of 188 , in pursuance of the Patents, Designs, and Trades Marks Acts, 1883 to 1888, in respect of the application of such Design to articles in Class , for which a Copyright of five years is granted.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

Designs.

H.

APPLICATION FOR COPY OF CERTIFICATE OF REGISTRATION OF DESIGN.

SIR,

I hereby request you to furnish me with a Copy Certificate of Registration of Design No. in Class .

(Signed) .

Dated the day of 189 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

Design.

I.

REQUEST FOR CERTIFICATE FOR USE IN LEGAL PROCEEDINGS.

SIR,

I hereby request you to send me for the purpose of use in the suit of (*a*) a certificate that the design of which a copy is herein enclosed was (*b*) .

(Signed) .

day of 189 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) Here state the title of the legal proceeding or the other purpose for which the Certificate is required.

(*b*) Here state the entry, matter, or thing which the writer wishes certified.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

J.

CERTIFICATE FOR USE IN LEGAL PROCEEDINGS.

In the matter of

No. .

I, Comptroller-General of Patents, Designs, and Trade Marks, hereby certify that

Witness my hand and seal this day of 189 .

Comptroller.

Seal.

Patent Office, Designs Branch,
25, Southampton Buildings,
London.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

K.

Designs.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR OF DESIGN, WITH DECLARATION IN SUPPORT THEREOF.

I, (*a*) hereby request that you will enter (*b*) name (*c*) in the Register of Designs as Proprietor of the Design No. in Class .

(*d*) entitled as to the said Design (*e*) .

And I do solemnly and sincerely declare that the above several statements are true, and the particulars above set out comprise every material fact and document affecting the proprietorship of the said Design as above claimed.

(*f*) And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*g*) .

Declared at
this day of 189 .
Before me.
(*h*)

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) or We.
Here insert name, full address, and description.

(*b*) My or our.

(*c*) or Names.

(*d*) I am, or We are.

(*e*) Here state whether design transmitted by death, marriage, bankruptcy, or other operation of law, and if entitled by assignment state the particulars thereof as, *e.g.*, "by deed dated the day of 188 made between So-and-so of the one part."

(*f*) This paragraph is not required when the declaration is made out of the United Kingdom.

(*g*) To be signed here by the person making the declaration.

(*h*) Signature and title of the authority before whom the declaration is made.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

L.

Designs.

NOTICE OF INTENDED EXHIBITION OF AN UNREGISTERED DESIGN.

I. (*a*) hereby give notice of my intention to exhibit a
of at the Exhibition, (*b*)
of , 189 , under the provisions of the Patents, Designs, and Trade Marks Acts of 1883 to 1888 (*c*) herewith enclose a

(Signed) .

Dated the day of , 189 .
To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) Here state name and address of applicant.

(*b*) State "opened" or "is to open."

(*c*) Insert brief description of Design, with drawing.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

M.

Designs.

REQUEST FOR CORRECTION OF CLERICAL ERROR OR FOR THE ENTRY OF NEW ADDRESS.

SIR,

I hereby request that .

(Signed) .

Dated the day of 189 .
To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

N.

Designs.

REQUEST FOR SEARCH UNDER SECTION 53.

SIR,

I hereby request that a search may be made in Class .

(Signed)

Dated the day of 189 .

To the Comptroller,
Patent Office, Designs Branch.
25, Southampton Buildings,
Chancery Lane, London, W.C.

Patents, Designs, and Trade Marks Acts, 1883 *to* 1888.

O.

Designs. APPLICATION FOR REGISTRATION OF DESIGN TO BE APPLIED TO A SET.

You are hereby requested to register the accompanying Design for (*a*) being a set of articles in Class in the name of (*b*) of who claims to be the proprietor thereof, and to return the same to

Statement of nature of design (*c*)

(Signed) (*d*).

Dated the day of , 189 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) Here set out the trade description of the articles in the set, as "A toilet set."

(*b*) Here insert legibly the name, address, and description of the individual or firm

(*c*) Such as whether it is applicable for the pattern or for the shape.

(*d*) To be signed by the applicant.

THIRD SCHEDULE.

CLASSIFICATION OF ARTICLES OF MANUFACTURE AND SUBSTANCES.

Classes.

1. Articles composed wholly or chiefly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or chiefly of wood, bone, ivory, papier mâché, or other solid substances not included in other classes.
4. ,, ,, glass, earthenware, or porcelain, bricks, tiles, or cement.
5. ,, ,, paper (except hangings).
6. ,, ,, leather, including bookbinding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.

13. Printed or woven designs on textile piece goods.
14. " " handkerchifs and shawls.

M. E. HICKS-BEACH.
President of the Board or Trade.

31*st March*, 1890.

DESIGNS RULES, 1893.

By virtue of the provisions of the Patents, Designs, and Trade Marks Acts, 1883–1888, the Board of Trade do hereby make the following rules:

Title and commencement.

1. These rules may be cited as the Designs Rules, 1893, and shall come into operation from and immediately after the 30th day of November, 1893.

Fees.

2. For the fees numbered 1, 2, and 3 specified in the First Schedule to the Designs Rules, 1890, shall be substituted the fees specified in the First Schedule hereto.

Forms.

3. For Rule 4 of the Designs Rules, 1890, shall be substituted the following Rule:

4. An application for the registration of a design for articles not being lace shall be made in the form E or form O in the Second Schedule hereto. An application for one design to be applied to lace shall be made in the form E 1 in the Second Schedule hereto, and for one design to be applied to a set of lace articles shall be made in the form O 1 in the Second Schedule hereto. A request for registration of the name of any subsequent proprietor of a lace design or set of lace designs shall be made in the form K 1 in the Second Schedule hereto. The remaining forms in such Schedule may be used in all cases to which they are applicable.

4. To the forms specified in the Second Schedule to the Designs Rules, 1890, shall be added the forms specified in the Second Schedule hereto.

Registration marks.

5. For Rule 32 of the Designs Rules, 1890, shall be substituted the following rule:

32. Before delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall if such article is included in Class 13 or Class 14 in the Third Schedule hereto cause each such article to be marked with the abbreviation Regd., and shall, if such article is included in any of the Classes 1 to 12 in the Third Schedule hereto, cause each such article to be marked with the abbreviation Rd., and also, in the case of articles other than lace, with the number appearing on the certificate of registration.

A. J. MUNDELLA,
President of the Board of Trade.

18*th November*, 1893.

SCHEDULE I.

FEES.

		£	s.	d.
1.	On application to register one design to be applied to single articles in each class not being lace and except articles in classes 13 and 14	0	10	0
2.	On application to register one design to be applied to lace, or to single articles in classes 13 and 14	0	1	0
3.	On application to register one design to be applied to a set of articles, not being lace, for each class of registration	1	0	0
3a.	On application to register one design to be applied to a set of lace articles	0	2	0

A. J. MUNDELLA,
President of the Board of Trade.

Approved.
FRANK MOWATT,
For the Lords Commissioners of Her Majesty's Treasury.
18*th November*, 1893.

SCHEDULE II.

FORMS.

E 1.—Application for Registration of a Lace Design in Class 9.
O 1.—Application for Registration of a Lace Design to be applied to a Set.
K 1.—Request to enter name of Subsequent Proprietor of a Lace Design or Set of Lace Designs.

Patents, Designs, and Trade Marks Acts, 1883-1888.

Designs.

E 1.

APPLICATION FOR REGISTRATION OF A LACE DESIGN IN CLASS 9.

You are hereby requested to register, without search, the accompanying Design in Class 9 in the name of (*a*) who claims to be the proprietor thereof, and to return the same to .

The nature of the design is the pattern.

(Signed) .

Dated the day of , 189 .

To the Comptroller,
The Patent Office, Designs Branch,
25, Southampton Buildings,
London, W.C.

(*a*) Here insert legibly the name, address, and description of the individual or firm.

(*b*) To be signed by the applicant or his agent duly authorized. When signed by an agent there should be added to the signature "Agent duly authorized by authorization, dated the day of 180 ."

Patents, Designs, and Trade Marks Acts, 1883-1888.

Designs.

O 1.

APPLICATION FOR REGISTRATION OF A LACE DESIGN TO BE APPLIED TO A SET.

You are hereby required to register, without search, the accompanying Design

for a Set of Lace Articles in Class 9 in the name of (a) , who claims to be the proprietor thereof, and to return the same to .

The nature of the design is the pattern.

(Signed) (b) .

Dated the day of 189 .

To the Comptroller,
The Patent Office, Designs Branch,
25, Southampton Buildings,
London, W.C.

(a) Here insert legibly the name, address, and description of the individual or firm.

(b) To be signed by the *applicant or his* agent duly authorized. When signed by an agent there should be added to the signature "Agent duly authorized by authorization, dated the day of 189 ."

Patents, Designs, and Trade Marks Acts, 1883–1888.

K 1.

Designs.

REQUEST TO ENTER NAME ON SUBSEQUENT PROPRIETOR OF A LACE DESIGN OR SET OF LACE DESIGNS.

The Comptroller is requested to enter the name of (a) , in respect of the proprietorship of the Registered Lace Design or set of Lace Designs No. , in Class 9 in place of the name of , at present appearing in the Register.

(Signed) (b) .

Dated the day of 189 .

To the Comptroller,
The Patent Office, Designs Branch,
25, Southampton Buildings,
London, W.C.

(a) Here insert legibly the name, address, and description, of the individual or firm.

(b) To be signed by the registered proprietor and by the assignee.

A. J. MUNDELLA,
President of the Board of Trade.

18th November, 1893.

DESIGNS RULES, 1898.

By virtue of the provisions of the Patents, Designs, and Trade Marks Acts, 1883–1888, the Board of Trade do hereby make the following Rules:

1. These Rules may be cited as the Designs Rules, 1898, and shall come into operation from and immediately after the date hereof.

2. For Rule 6 of the Designs Rules, 1890, shall be substituted the following Rule:

> All communications between an applicant for the registration of a design and the Comptroller or the Board of Trade, as the case may be, may be made by or through an agent duly authorized to the satisfaction of the Comptroller, but the Comptroller shall not be bound to recognize as such agent, or to receive further communications from, any person whose name, by reason of his having been adjudged guilty of disgraceful professional conduct, has been erased from the Register of Patent Agents kept under the provisions of the Patents, Designs, and Trade Marks Act, 1888, relating to the registration of Patent Agents, and not since restored.

Dated this 15th day of September, 1898.

CHAS. T. RITCHIE,
President of the Board of Trade.

INSTRUCTIONS TO PERSONS WHO WISH TO REGISTER DESIGNS.

Preliminary.

1. The Patents, Designs, and Trade Marks Acts, 1883 to 1888, and the Rules thereunder in relation to the Registration of Designs, should be carefully studied.

Copies of the Acts and Designs Rules can be purchased at the Patent Office, Sale Branch, 25, Southampton Buildings, London, W.C. Money sent by post should be remitted by Postal or Post Office Order.

Price of the Act of 1883, 1*s.* 7½*d.*; by post, 1*s.* 9*d.* Act of 1888, 1½*d.*; by post, 2*d.* Price of the Design Rules, 1890, 6*d.*; by post, 6½*d.* Price of Lace Designs Rules, 1893, 1*d.*; by post, 1½*d.*

2. In order to obtain registration application must be made to the Comptroller in pursuance of Rules Nos. 6–11 of the Designs Rules, 1890.

Applications sent by post should be addressed—

The Comptroller,
Patent Office,
Designs Branch,
25, Southampton Buildings,
Chancery Lane,
London, W.C.

3. A Design to be capable of registration must be *new or original*, and not previously published in the United Kingdom. *See* Section 47 (I.) of the Act, 1883.

4. For the definition of a Design *see* Section 60 of the Act of 1883.

NOTE.—*As many inventors imagine that mechanical inventions can be protected by Registration as Designs, it may be stated that improvements in the construction, arrangement, or application of machinery can only be protected by a Patent.*

Applications.

5. Stamped Forms of Application to register can be obtained at the following places:

(*a*) The Inland Revenue Office, Royal Courts of Justice, London (Room No. 6).

(*b*) The following Post Offices in London:

The General Post Office, E.C.
District Post Office, Lombard Street, E.C.
,, 195, Whitechapel Road, E.
,, 239, Borough High Street, S.E.
,, Charing Cross, W.C.
,, 28, Eversholt Street, Camden Town, N.W.
Post Office, 12, Parliament Street, S.W.

(*c*) The chief Post Office of :

ENGLAND AND WALES.

Accrington.
Altrincham.
Ashton-under-Lyne.
Barnsley.
Barrow-in-Furness.
Bath.
Bedford.
Beverley.
Birkenhead.
Birmingham.
Blackburn.
Bolton.
Bradford.
Brighton.
Bristol.
Bromsgrove.
Burnley.
Burslem.
Burton-on-Trent.
Bury.
Cambridge.
Cardiff.
Carlisle.
Chatham.
Chester.
Clitheroe.
Congleton.
Coventry.
Crewe.
Croydon.
Darlaston.
Derby.
Dewsbury.
Doncaster.
Dorchester.
Driffield.
Droitwich.
Dudley.
Durham.
Exeter.
Gateshead.
Goole.
Greenwich.
Guildford.
Halifax.
Hartlepool.
Huddersfield.
Hull.
Ipswich.
Keighley.
Kendal.
Kidderminster.
Knaresbro'.
Knutsford.
Lancaster.
Leamington.
Leeds.
Leicester.
Lichfield.
Lincoln.
Liverpool.
Macclesfield.
Manchester.
Middlesbrough.
Nantwich.
Newcastle.
Newport (Mon.).
Northallerton.
Northampton.
Nottingham.
Nuneaton.
Oldbury.
Oldham.
Patrington.
Plymouth.
Pontefract.
Portsmouth.
Prescot.
Preston.
Reading.
Redditch.
Richmond (Yorks.).
Ripon.
Rochdale.
Rotherham.
Rugby.
Salford.
St. Helen's.
Scarborough.
Sedgley.
Sheffield.
Southampton.
Stafford.
Stalybridge.
Stockport.
Stoke-on-Trent.
Stourbridge.
Stourport.
Sunderland.
Swansea.
Tamworth.
Truro.
Tunstall.
Wakefield.
Walsall.
Warrington.
Wednesbury.
West Bromwich.
Whitby.
Widnes.
Wigan.
Wolverhampton.
Wolverton.
Woolwich.
York.

SCOTLAND.

Aberdeen.
Dumbarton.
Dundee.
Edinburgh.
Glasgow.
Greenock.
Inverness.
Lanark.
Leith.
Paisley.
Perth.
Renfrew.

IRELAND.

Belfast.
Cork.
Dublin.
Dundalk.
Galway.
Limerick.
Londonderry.
Waterford.
Wexford.

NOTE.—*Forms are not supplied by the Patent Office, but can be purchased on personal application at the Inland Revenue Office, Royal Courts of Justice (Room No. 6), or at a few days notice at any Money Order Office in the United Kingdom upon prepayment of the value of the stamp.*

If it should not be convenient to apply in person in either of the ways specified, the stamped forms can be ordered by applicants at home or abroad by post from the Controller of Stamps, Room 5, Inland Revenue Office, Somerset House, London, W.C. In that case a Banker's draft or a Money or Postal Order, payable to the Commissioners of Inland Revenue and crossed Bank of England, for the value of the stamp, and for the cost of postage and registration, to be forwarded with the application.

6. An application consists of the following :

(1) The form of application, Form D. or Form O., properly filled up * and signed by the applicant or his authorized agent, and three exactly similar drawings, photographs, or specimens of the design.

* Applicants should be *specially careful* to give correctly their full name and address, with their trade, business, or occupation ; also to fill in, after the word "Statement of nature of Design," the words "for the Pattern," "for the Shape or Configuration," or "for the Ornament," or for any two or more such purposes, as the case may be, adding, when necessary, a short technical description of the article with the part or parts claimed as new or original specially defined.

In the case of a lace design the proper forms are Form E 1 (Single Design) and Form O 1 (Set).

(*a*) If it be desired to secure a date of registration at once, one sketch of the design (sufficiently definite to identify the same) may be sent with the application form. In this case the design, if accepted, will eventually be registered as of the date on which such sketch was received; but no certificate of registration can be issued until three exact drawings, photographs, or specimens have been sent in substitution for the sketch.

The Drawings or Photographs.

7. The drawings, &c., accompanying an application must be sent in triplicate, each representation of each design or set to be upon ordinary foolscap paper, and not on cardboard (on one side only), of the size of 13 in. by 8 in.

8. When sketches, drawings, or tracings are furnished, they should be in ink, or if in pencil they must be fixed. Drawings on tracing paper cannot be received, unless mounted on ordinary foolscap paper.

9. Rough sketches cannot be accepted.

10. When the design is to be applied to a set, each of the drawings accompanying the application, or the sketch, if a sketch is sent, should show all the various arrangements in which it is proposed to apply the design to the articles included in the set.

11. When specimens of the design are furnished in lieu of drawings or photographs, they must be of such a nature as can be pasted into books; the dimensions of each specimen must not exceed 12 in. by 21 in., and each must, when necessary, be mounted upon ordinary foolscap paper of the size above mentioned. Each representation of a design in Classes 13 and 14 should show the complete pattern and a portion of the repeat, and ought not to be of less size than 7 in. by 3 in.

12. Only two views of the same design can be accepted, unless in the case of a design for a set. Each view should be designated in writing (*i.e.*, front view, side view). Both views should be on one and the same half sheet of foolscap paper.

13. A request for search under Rule 35 of Designs Rules, 1890, must be accompanied by two representations of the design to be searched for.

14. Before delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in Class 13 or Class 14, cause each such article to be marked with the abbreviation "Regd.," and shall, if such article is included in any of the Classes 1 to 12, cause each such article to be marked with the abbreviation "Rd.," and also, in the case of articles other than lace, with the number appearing on the certificate of registration.

15. The attention of applicants is called to the fact that by section 58 of the Act of 1883, the protection afforded to a registered design is restricted to the particular class or classes of goods in which the design is registered.

By section 47 (sub-section 4) of the Act of 1883, the same design may be registered in more than one class. In such case a separate application, together with three representations, is necessary for each class.

16. *List of Classes.*

1. Articles composed wholly or chiefly of metal not included in Class 2.
2. Jewellery.
3. Articles composed wholly or chiefly of wood, bone, ivory, papier mâché, or other solid substances not included in other classes.
4. Articles composed wholly or chiefly of glass, earthenware or porcelain, bricks, tiles, or cement.
5. Articles composed wholly or chiefly of paper (except hangings).
6. Articles composed wholly or chiefly of leather, including book-binding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods.
14. „ „ handkerchiefs and shawls.

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17. The following is a list of the stamped forms to be had at the places mentioned in paragraph 5 :—

DESIGNS.

Letter.	Title of Form.	Fee. £ s. d.
E	Application for Registration of Single Design in any one of the Classes 1 to 12, not being a Lace Design .	0 10 0
E	Application for Registration of Single Design in Class 13 or 14	0 1 0
E 1	Application for Registration of Single *Lace* Design in Class 9	0 1 0
F	Appeal to Board of Trade on Refusal of Comptroller to Register a Design	1 0 0
H	Application for Copy of Certificate of Registration of Design	0 1 0
I	Request for Certificate for use in Legal Proceedings .	0 5 0
K	Request to enter Name of subsequent Proprietor of Design, with Declaration in support thereof . .	Same as Registration Fee.
K 1	Request to enter Name of subsequent Proprietor of a *Lace* Design or set of *Lace* Designs	
L	Notice of intended Exhibition of an Unregistered Design	0 5 0
M	Request for Correction of Clerical Error or for Entry of New Address	0 5 0
N	Request for Search under Section 53 of Act of 1883, or Rule 35 of Designs Rules, 1890	0 5 0
O	Application for Registration of Design for "Set" of articles, not being Lace	1 0 0
O 1	Application for Registration of Design to be applied to a "Set" of *Lace* articles	0 2 0

NOTE.—The term "set" to include any number of articles ordinarily on sale together, irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

N.B.—Forms E and O are kept on sale at the places named in paragraph 5. The other forms must be bespoken of the Postmasters at those places.

Forms E 1 and O 1 are specially kept on sale at the Chief Post Office at Nottingham.

The Patent Office, Designs Branch, is open from 10 A.M. to 4 P.M.

C. N. DALTON,
Comptroller-General.

The Patent Office, Designs Branch,
London.

APPENDIX (G.)

Short Forms of Agreements between Authors and Publishers and Assignments of Copyright.

No. 1.—*Agreement for Sale of Copyright in a Work.*

Memorandum of Agreement made the day of 19 .
Between A. B. of , of the one part, and C. D., of ,
and E. F., of (hereinafter called D. and F.), publishers of the
other part.

1. The said A. B. agrees to write and edit a work to be entitled , to prepare the same for the press, together with a full and comprehensive Index and Table of Cases and Contents to the same, by the day of , to correct the proof-sheets, and to sell and assign all his copyright and interest in the said work to the said D. & F., their executors, administrators, and assigns, for the sum of money hereinafter mentioned.

2. The said D. & F., for themselves, their executors, administrators, and assigns, agree to print and publish and bear all the charges of printing and publishing the said work, and to pay to the said A. B., for his copyright and interest in the said work, the sum of pounds, on the day of the publication of the said work.

3. The said A. B. to have copies of the said work free of charge. *In witness* whereof the said parties have hereunto set their hands the day and year first above written.

No. 2.—*Half-profit Agreement between Author and Publisher.*

Memorandum of Agreement made the day of 19 .
Between A. B., of , of the one part, and C. D., of ,
publisher, of the other part.

1. It is agreed that the said C. D. shall, at his own expense and risk, print and publish, a work which has been written by the said A. B. entitled and, after deducting from the produce of the sale thereof the charges for printing paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that shall be printed of the work shall be divided into two equal parts, one moiety to be paid to the said A. B., and the other moiety to be retained by the said C. B.

2. The copyright in the said work, when the same shall have been published, shall be and remain vested in the said A. B., subject nevertheless to the rights of the said C. D. under and by virtue of this agreement.

3. The books sold shall be accounted for at the trade sale price, reckoning twenty-five copies as twenty-four, unless it be thought advisable to dispose of any copies, or of the remainder, at a lower price, which shall be left to the judgment and discretion of the said C. D.

4. It is understood between the aforesaid parties, that copies of the said book are to be presented to the said A. B. free of charge (*a*). *In witness, &c.*

No. 3.—Another Form of Agreement.

MEMORANDUM OF AGREEMENT made the day of 19 . Between A. B., of , of the one part, and C. D., of , and E. F., of (hereinafter called D. & F.), publishers, of the other part.

1. The said A. B. shall write and fully prepare for the press the whole of a book to be entitled , on or before the day of , and shall correct the proof-sheets, and superintend the printing thereof.

2. The said D. & F. shall direct the mode of printing the said book, and shall bear and pay all the charges thereof, and of publishing the same (except as hereinafter mentioned), and shall take all the risk of the publication on themselves.

3. The said book shall be sold in the United Kingdom, at the price of per copy.

4. The said D. & F. shall, out of the produce of the sale of the said book, in the first instance, be refunded all the cost and expenses which they shall have incurred respecting the said book, after which the profits shall be equally divided between the said A. B. and D. & F.

5. The accounts shall be made up at the end of every year, and the profits, if any, be then divided. The said A. B. shall have the right either by himself or by any accountant nominated by him to inspect all books and documents relating to the publication and sale of the said works in the possession of the said D. & F.

6. The said D. & F. shall account for all the copies which they shall sell of the said book at the wholesale bookseller's price, deducting therefrom a commission of , they taking the risk of the credit which they shall give on the same.

7. The alterations and corrections in the proof-sheets, and revises, which shall exceed the charge of per sheet, shall be borne and paid by the said A. B., and shall be deducted out of his share of the profits.

8. In case all the copies of the said book shall have been sold off, and a second or any subsequent edition of the said book be required by the public, the said A. B. shall make all necessary alterations and additions thereto, and the said D. & F. shall print and publish the said second and every subsequent edition of the said book on the above conditions.

9. In case all the copies of any edition of the said work shall not be sold off within years after the time of publication, the said D. & F. shall be at full liberty to dispose of the remaining copies, so unsold, either by public auction or private contract, or in such manner as they may deem most advisable, so that the account may be finally settled and closed (*b*).

10. The copyright in the said work when published shall, subject to the rights of the said D. & F. under this agreement, be and remain vested in the said A. B. *In witness, &c.*

No. 4.—Assignment of Copyright in a Literary Work (c).

THIS AGREEMENT made the day of 19 . Between A. B. [*assignor*], of , of the one part, and C. D. [*assignee*], of , of the other part.

Whereas the said A. B. has written and published a certain work entitled , of which the copyright is vested in him, and has agreed with the said C. D. for the sale to him of the said copyright for the sum of pounds.

(*a*) See a somewhat similar agreement; *Reade* v. *Bentley* (3 K. & J. 271).
(*b*) See *Stevens* v. *Benning* (6 D. M. & G. 223).
(*c*) It is more usual to make such an assignment by entry in the Register at Stationers' Hall.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of pounds now paid by the said C. D. to the said A. B., the receipt whereof the said A. B. doth hereby acknowledge, the said A. B. as beneficial owner doth hereby assign unto the said C. D. all his right and interest in the said work and the copyright thereof, whether in Great Britain or elsewhere, including all rights of translation and dramatisation and the performing rights in the said work for all the residue now unexpired of the term or terms during which the said work is entitled to copyright. *In witness, &c.*

No. 5.—Assignment of Rights in Unpublished Work.

THIS AGREEMENT made the day of 19 . Between A. B. [*assignor*], of , of the one part, and C. D. [*assignee*], of , of the other part.

Whereas the said A. B. has written and composed a work on [*describe work*], and has agreed to sell his rights in the manuscript thereof to the said C. D. for the sum of pounds. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of pounds now paid to the said A. B. by the said C. D., the receipt whereof the said A. B. doth hereby acknowledge, the said A. B. as beneficial owner both hereby assign unto the said C. D. all his right, title, and interest of and in the said work and the manuscript thereof, including the copyright therein, and all rights of publication, translation, dramatisation, and performance whatsoever. *In witness, &c.*

No. 6.—Licence to print one Edition of a Work.

MEMORANDUM OF AGREEMENT made the day of 19 . Between A. B., of , of the one part, and C. D., of , of the other part.

Whereas the said A. B. has in preparation a work to be called .
NOW THIS AGREEMENT WITNESSETH that the said A. B. for the consideration hereinafter expressed, doth hereby authorize the said C. D. to print, publish, and sell an edition of copies of the said work, the said A. B. hereby reserving to himself the general copyright in the said work. And the said A. B., in consideration of the payments hereinafter agreed to be made by the said C. D., doth hereby agree with the said C. D. that he will furnish to the printer, to be employed by the said C. D., a fair copy of the said work, and will superintend the printing, and correct the proofs thereof in the usual manner, and that he will register his title under the "Copyrights Acts," and will not authorize any person to print, publish, or sell, and will not himself print, publish, or sell, any other copies until the whole of the said copies have been disposed of by the said C. D., provided the said copies are sold within years from the date hereof. *And* the said C. D., in consideration of the aforesaid authority and agreement, doth hereby agree with the said A. B. that he will pay him, the said A. B., the sum of for each and every copy of the said copies, payable half-yearly, as fast as the said copies shall be sold, or otherwise disposed of, he rendering to the said A. B. an account of sales of the said work, at the expiration of every six months from the day of the first publication, until the whole shall be sold, and that he will also give to the said A. B. copies of the said work, bound, and free of charge, immediately upon publication thereof. *And* the said C. D., in consideration also of the aforesaid authority and agreement, doth further agree with the said A. B. that he will not p[illegible] publish, or sell, any more than the said copies, until authorized by the su[illegible]. B., or his legal representatives, it being clearly understood that the licence herein contained extends only to one edition of the number above specified. *In witness, &c.*

No. 7.—Limited Assignment by an Author of a new Edition of his Work.

A. B., of , having prepared a new edition of , and C. D., of , being desirous of purchasing the same and the copyright in the said edition, it is agreed that copies of the work and no more shall be printed in type and page corresponding with , at the sole cost of the said C. D., and the said C. D. shall pay to the said A. B. for the said edition and the copyright therein the sum of . The work to be divided into volumes, and to be sold to the public for in boards; but should the said work exceed sheets, or pages, a proportionate increase is to be made in the charge to the public, and a proportionate addition made to the consideration to be paid by C. D. to A. B. copies in boards to be delivered to the said A. B. free from all charge or expense, and the copyright in the said edition to be re-assigned to the said A. B. when the said edition shall have been exhausted (*a*).

No. 8.—Agreement to enlarge a second Edition of a Book, and correct Proof of same.

THIS AGREEMENT made the day of 19 . Between A. B., of , of the one part, and C. D., of , of the other part.

Witnesseth, that the said A. B., in consideration of the sum of , agrees to examine, correct, and enlarge the work known as , to furnish additional manuscript matter for the second edition of the work, and to enlarge the index, and make it full and complete. IT IS FURTHER AGREED that the new edition of the work shall be of the same sized page as the present work, and contain an equal amount of matter on each page, and that the additional matter furnished shall enlarge the work not less than pages, and shall be furnished to the said C. D. at not less than pages per day, commencing on the instant. *And* the said A. B. is to examine and to correct the proof-sheets so soon as they shall be furnished, and to complete the index within a reasonable time after the whole signatures of the text shall be ready for him for that purpose. *And* the said C. D. on his part agrees to print the said work as the matter shall be supplied, to provide the said A. B. with a copy of the work, by signatures, as each signature shall be worked off, for the purpose of arranging the index; to furnish the said A. B. bound copies of the work, as soon as they can be conveniently furnished, and to pay the said A. B. the sum of for his copyright and interest in the said edition on the day the last proof-sheet is corrected for the press. *In witness, &c.*

No. 9.—Agreement between an Author and Publisher for the sale of a Work where a Sum is paid for the Copyright; with variation where the Profits are divided (b).

THIS AGREEMENT made the day of 19 . Between A. B. [*author*], of , of the one part, and C. D. [*publisher*], of , of the other part.

Whereas the said A. B. has written and composed a certain work entitled , and the same is now ready for the press, and the said C. D. has contracted for the purchase of the copyright of the said work at or for the price or sum of £ , to be paid in the manner hereinafter mentioned, NOW THESE PRESENTS WITNESS that the said A. B. agrees to sell, and the said C. D. agrees to purchase, *all that*

(*a*) Cf. *Sweet* v. *Cater* (11 Sim. 572).

(*b*) Where the profits are to be divided between the author and publishers, leave out the portions of the precedent within brackets and add: "And it is hereby agreed that after paying and defraying all such expenses as aforesaid, the net proceeds and profits as well of the first as of every other succeeding edition shall be equally divided between the said A. B. and C. D."

the said work and premises and the copyright thereof. AND IT IS HEREBY AGREED that the said work shall consist of sheets [*size*]. *And* that the said A. B. shall correct the said sheets of the said work through the press, and compose a good and sufficient index thereto, and in every respect prepare the same for publication, and complete the same within calendar months from the date hereof, *And* shall and will, within days after the publication thereof, or at any time or times thereafter, if so required by the said C. D. assign and make over the said work and all his right, title, and interest in the copyright thereof unto the said C. D., his executors, administrators, or assigns in such manner and form as may be by him or them reasonably required. [*And* that the said C. D. shall pay the said sum of £ in the manner hereinafter mentioned (that is to say) the sum of £ on the day of the publication of the said work, and the sum of £ (the residue thereof) within three months after the publication thereof.] *And* the said C. D. shall and will cause the said work to be printed on good paper and pay and defray all the costs, expenses of printing and advertising the said work, and all other expenses attending its publication. *And* shall and will allow copies of the said work to the said A. B. *And shall* and will exert himself to the utmost in procuring, and advancing the sale of the said work. [AND IT IS HEREBY AGREED that in case a second, third, or any other succeeding edition of the said work shall at any time be called for, the said A. B. shall be entitled to edit the said second, third, and subsequent edition, making all necessary additions, alterations, and corrections to such edition, so as to make the same as complete as possible. *And* shall from time to time within days after the publication thereof, or at any time or times thereafter, if so required by the said C. D. assign and make over the said second, third, or other succeeding edition of the said work, and all his right, title, and interest in the copyright thereof unto the said C. D., his executors, administrators, or assigns in such manner and as may be by him or them reasonably required. *And* the said C. D. shall pay the sum of £ to the said A. B. on the day of the publication of such second, third, and every subsequent edition, and shall and will pay and sustain all the costs and charges of such second, third, and every subsequent edition in the same manner as is hereinbefore agreed upon respecting the first edition. PROVIDED ALWAYS AND IT IS HEREBY AGREED that in case the said A. B. shall refuse to edit such second, third, or subsequent edition, or neglect so to edit the same after six months notice to him for that purpose given by the said C. D. it shall be lawful for the said C. D. to engage with any other person or persons to edit the same without making or being liable to make any further payment to the said A. B.] *In witness, &c.*

No. 10.—*Agreement between an Author and Publisher for the sale of a Work by Commission.*

THIS AGREEMENT made the day of 19 . Between A. B. [*author*], of , of the one part, and C. D. [*publisher*], of , of the other part.

Whereas the said A. B. is the author and proprietor of a certain work entitled ; *And whereas* there is now a demand for a new edition of such work being the edition. NOW THESE PRESENTS WITNESS that the said A. B. doth hereby agree with the said C. D. that he the said C. D. shall be the sole publisher of the said edition of the said work at a commission of pounds per cent. on the net profits of the sale of such work. *And* that he the said A. B. will within days next hereafter deliver to such printer as the said C. D. shall name a portion of the copy of the said work and continue to supply him with copy thereof until the whole is completed: *And* that the said C. D. shall indemnify the said A. B. from all losses to be incurred as well in the printing and publishing of the said work as after its publication or by reason of the said work not selling. AND IT IS HEREBY

AGREED that it shall be lawful for the said C. D. out of the profits and proceeds of the said work in the first place to deduct and repay himself the expenses of the paper, printing, advertisements, warehouse-room, insurance money, and commission after the rate aforesaid, and subject to such payments the said C. D. shall pay the residue of the profits and proceeds to the said A. B. *And* that he the said C. D. shall render a full and faithful account to the said A. B. on the day of and on the day of in every year of the sale and proceeds of the said edition. *In witness, &c.*

No. 11.—Agreement to write an Article for an Encyclopædia.

AN AGREEMENT made the day of 19 . Between A. B. [*author*], of , of the one part, and C. D. [*proprietor*], of , of the other part.

Whereas the said C. D. is the proprietor of an encyclopædia which he proposes to publish under the title , and the said A. B. has agreed to contribute an article to the said encyclopædia on the terms hereinafter appearing. NOW THESE PRESENTS WITNESS and it is hereby agreed and declared as follows:

1. The said A. B. will write and the said C. D. will accept and publish in the said encyclopædia an article on the subject of , such article not to be of less than words and not to exceed words.

2. The said A. B. will deliver the manuscript of the said article to the said C. D. not later than the day of , and will examine and correct the proof-sheets of the same.

3. The said C. D. will pay to the said A. B. for the said article at the rate of £ per words.

4. The copyright in the said article shall be and become the absolute property of the said C. D.

Or

The copyright in the said article shall belong to the said A. B., and this agreement shall operate as a licence only for the said C. D. to publish the same in the encyclopædia aforesaid, and it shall be lawful for the said A. B. to publish the said article after the lapse of years from the date of its publication in the said encyclopædia either in separate form or in a collection of the writings of the said A. B., but not in any other encyclopædia or collection of writings whatsoever without the leave and licence in writing of the said C. D. *In witness, &c.*

No. 12.—Agreement for the editing of a Work between the Publisher and Editor, with variations where for translating a Work (a).

THIS AGREEMENT made the day of 19 . Between A. B. [*publisher*], of &c., of the one part, and C. D. [*editor*], of &c., of the other part.

Whereas the said A. B. some time since published a certain work written and composed by C. D., and entitled . *And whereas* there is a demand for a new edition of the said work. *And whereas* the said A. B. has agreed with the said C. D. to edit and make ready for publication as hereinafter is mentioned, a new edition (being the) of the said work [to be contained in volumes]

(a) Where the agreement is for translating a work, leave out the recitals in the precedent above and insert: "Whereas a certain work has lately been published in Germany in the German language entitled . And *whereas* the said A. B. is desirous that a translation of the said work should be made and perfected by the said C. D. NOW THESE PRESENTS WITNESS that in consideration of the payment of the sum hereinafter mentioned to him the said C. D., he the said C. D. agrees that he will well and faithfully translate the said work into English, and will complete the same on or before the day of ," &c.

for the sum of pounds. NOW THERFORE THESE PRESENTS WITNESS that the said C. D., in consideration of the sum of £ , to be paid to him by the said A. B. in manner hereinafter mentioned, agrees with the said A. B. that he the said C. D. will revise, edit, and prepare for publication the edition of the said work. *And* will also examine and correct the proof-sheets of the said work in its progress through the press. *And* that he will complete and render fit for publication the [first volume of the] said work by the day of next [the second volume by the day of , &c. (*according to the number of volumes*)]. *And* further that the said C. D. will render the said edition of the said work as complete as possible, and will make all necessary and proper additions, corrections, and alterations and add such observations and information to the said work as shall occur to him, and exert himself to the utmost to render the said work valuable and popular, and will sell and assign all his copyright and interest in the said edition of the said work to the said A. B., his executors, administrators, and assigns. *And* the said A. B. agrees to pay unto the said C. D. for editing the said volumes and for his copyright and interest in the said edition of the said work the said sum of £ in the proportions and at the times hereinafter mentioned (that is to say) the sum of £ being one part thereof on the first of the said volumes being ready for publication, and the like sum of £ on each of them the said second and third of the said three volumes (*or according to the number of volumes*) being ready for publication. *In witness, &c.*

No. 13.—*Agreement to write an Opera.*

MEMORANDUM OF AN AGREEMENT made the day of 19 .
Between A. B., of , of the one part, and C. D., of , of the other part.

The said C. D. engages to write a full opera for musical performance at one of the large theatres, on the following terms :

1. That the copyright of the said opera shall remain the property of the said C. D. except as hereinafter mentioned.

2. That the price for the performance of the said opera to be charged by the said C. D. to managers of country theatres (that is, of all theatres in the United Kingdom, except those in, or within five miles of the Royal Exchange in the city of London) shall not exceed the sum of twenty shillings nightly (*a*).

3. That the sum to be paid to the said C. D. by the said A. B. for writing the said opera shall be pounds, to be paid in the following manner, viz., pounds on the signature of the present agreement, a second sum of pounds within a month of this date, pounds on the delivery of the complete manuscript of the said opera, and the remaining sum of pounds on the day following the first night of the performance of the said opera.

4. That the said A. B. shall have all the profits and benefits arising from the right of representation of the said opera in London, or within five miles of the Royal Exchange aforesaid, and shall be at liberty to make arrangements with any manager for its performance within the limits aforesaid.

5. That the said A. B. shall have the entire and exclusive right of publishiug, with the music, all the poetry or words of the vocal portions of the said opera, for the sole benefit of the said A. B., but not the right of publishing such poetry or words independently of the music.

And the said A. B. doth hereby agree for the purchase of the said opera, at the price and under the conditions aforesaid, the said C. D. also agreeing to deliver the complete manuscript of the said opera within six months of the present date. *In witness, &c.*

(*a*) The object of this stipulation being that the amount of the charge should not prevent the performance of the opera.

APPENDIX (H).

Forms of Agreement relating to Artistic Copyright.

No. 1.—*Form for entire reserration of Copyright in a Picture by the Author where his Work has been Commissioned.*

Memorandum of Agreement made the day of 19 . Between A. B., of , of the one part, and C. D., of , of the other part.

Whereas the said A. B. has at the request of the said C. D. made for him at the price of £ a drawing [*or painting or photograph*] being [*shortly describe the subject*]. Now this Agreement witnesseth that at or before the time of the sale or disposition of such drawing [*or painting or photograph,*] it was agreed between the said parties hereto that all the copyright in such work (including the making repetitions thereof) should be the property of the said A. B., and that he should be entitled to sell or otherwise dispose of all sketches and studies made, designed, or executed in connection with the said work. *In witness, &c.*

No. 2.—*Form for entire reservation of Copyright by Author, where he first sells his Non-commissioned Work.*

Memorandum of Agreement made the day of 19 Between A. B., of , of the one part, and C. D., of , of the other part.

Whereas the said C. D. hath agreed to purchase from the said A. B. at the price of £ a drawing [*or painting or photograph*] being [*shortly describe the subject*]. Now this Agreement witnesseth that at or before the time of the sale of such drawing [*or painting or photograph*] it was agreed between the said parties hereto that all the copyright in such work (including the making of repetitions thereof), should be the property of the said A. B., and that he should be entitled to sell or otherwise dispose of all sketches and studies made, designed, or executed in connection with the said work. *In witness, &c.*

No. 3.—*Form for conveying Copyright to the Purchaser upon sale of a Picture.*

Memorandum of Agreement made the day of 19 . Between A. B. [*artist*], of , of the one part, and C. D. [*purchaser*], of , of the other part.

Whereas the said C. D. has agreed to purchase from the said A. B. at the price of £ a painting [*or drawing*] executed by the said A. B. being [*shortly describe subject*], together with the copyright therein. Now this Agreement witnesseth and it is hereby agreed and declared that the copyright in the said

painting [*or drawing*] shall become and be the property of the said C. D. PROVIDED nevertheless that nothing herein contained shall be deemed or taken to prejudice the right of the said A. B. to sell or otherwise dispose of all sketches and studies made, designed, or executed in connection with the said work or any copies of such sketches or studies. *In witness, &c.*

4.—Assignment of Copyright in Painting, Drawing, or Photograph.

THIS INDENTURE made the day of 19 . Between A. B. [*proprietor of copyright*], of , of the one part, and C. D. [*assignee*], of , of the other part.

Whereas the said A. B. is the proprietor of the copyright in a picture painted by J. W. [*or a drawing drawn by J. W., or a photograph executed by J. W.*], the subject and title whereof is . And whereas the said A.B. has agreed to sell the said copyright (*a*) [*together with the negative of the said photograph*] to the said C. D. for the sum of £ . NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ now paid by the said C. D. to the said A. B., the receipt whereof he the said A. B. doth hereby acknowledge, he the said A. B. as beneficial owner doth hereby assign unto the said C. D. all the copyright in the said picture [*or drawing or photograph*], whether in the British Dominions or elsewhere, for the residue of the term or terms thereof. *In witness, &c.*

No. 5.—Form for partial reservation of Copyright by the Author where his Work has been Commissioned.

MEMORANDUM OF AGREEMENT made the day of 19 . Between A. B., of , of the one part, and C. D., , of the other part.

Whereas the said A. B. has at the request of the said C. D. made for him at the price of £ a painting [*or drawing or photograph*] being [*shortly describe the subject*]. NOW THIS AGREEMENT WITNESSETH that at or before the time of the sale of the said painting [*or drawing or photograph*] it was agreed between the said parties hereto that all copyright thereof for the purposes of making all engravings and photographs therefrom should be the property of the said A. B. And that the said A. B. should be entitled to sell or otherwise dispose of all sketches and studies made, designed, or executed in connection with the said work. *In witness, &c.*

No. 6.—Form for partial reservation of Copyright by the Author where he first sells his Non-commisssioned Work.

MEMORANDUM OF AGREEMENT made the day of 19 Between A. B., of , of the one part, and C. D., of , of the other part.

Whereas the said C. D. has agreed to purchase from the said A. B. at the price of £ a painting [*or drawing or photograph*] being [*shortly describe the subject*], NOW THIS AGREEMENT WITNESSETH that at or before the time of the sale of the said painting [*or drawing or photograph*] it was agreed between the said parties thereto that all copyright thereof for the purpose of making all engravings or

(*a*) If the right to be sold is only the right to reproduce in a certain way, say, "the sole and exclusive right to reproduce the said picture by line engraving," or as the case may be, and alter *testatum* accordingly.

photographs therefrom should be the property of the said A. B., and that the said A. B. should be entitled to sell or otherwise dispose of all sketches and studies made designed, or executed in connection with the said work. *In witness, &c.*

No. 7.—Licence by Proprietor of Copyright.

A. B., of , being the proprietor of the copyright in a painting [*or drawing or photograph*] in consideration of the sum of £ paid to me by C. D., of , do hereby grant to the said C. D. the sole and exclusive liberty and licence to copy, use, and apply the design of such work for all purposes of engraving and photographing the same. [*Any additional terms may be here mentioned.*]

A. B.

To Mr. C. D.

No. 8.—Agreement between a Publisher and Engraver for the engraving of a Painting.

THIS AGREEMENT made the day of 19 . Between A. B. [*publisher*], of &c., of the one part, and C. D. [*engraver*], of &c., of the other part.

Whereas the said A. B. is desirous of publishing a line [*or* mezzotinto] engraving of a certain painting called , and painted by Mr. . NOW THEREFORE THESE PRESENTS WITNESS that in consideration of the sum of £ to be paid in the manner hereinafter mentioned, he the said C. D. agrees that he will at his own cost and charges engrave and execute a perfect and correct line [*or* mezzotinto] engraving on copper [*or* steel] plate of the said painting called , *And* the said engraving shall be inches long and inches broad, and that the copper [*or* steel] on which the same shall be engraved shall be inches long and inches broad. *And* that the said C. D. will complete the same on or before the day of . *And* shall at his own expense take off and print complete impressions from the said plate, on good and proper paper and deliver them to the said A. B., and shall sign artist's proofs from the plate. *And* the said A. B. agrees to pay the said sum of £ in manner hereinafter mentioned (that is to say) the sum of £ on the day of , and the sum of £ (the residue thereof) on the day of , if the said work shall be completed at such last-mentioned time and otherwise upon the date of completion. *And* it is hereby agreed that the said C. D. shall be allowed to retain complete impressions of the said engraving for the use of himself and friends, but it shall not be lawful for the said C. D. to sell or dispose of the same, and the copyright in the said engraving shall belong solely to the said A. B. *In witness, &c.*

No. 9.—Agreement between an Artist and a Purchaser respecting a Painting, and the Copyright therein, under the 25 & 26 Vict. c. 68. The purchase money being payable by Instalments.

ARTICLES OF AGREEMENT made the day of 19 . Between A. B. [*artist*], of &c., of the one part, and C. D. [*purchaser*], of &c., of the other part.

Whereas the said A. B. is the artist of and is now engaged in finishing an original drawing or painting called or intended to be called or known as . AND WHEREAS the said C. D. hath contracted and agreed with the said A. B. for the absolute purchase of the said drawing or painting, and the copyright thereof, and the sole and exclusive right of copying, engraving, reproducing and multiplying

such drawing or painting and the design thereof by any means and of any size whatsoever at the price or sum of £ to be paid by the several instalments and in manner hereinafter appearing. NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared by and between the parties hereto as follows:

1. The said A. B. shall forthwith proceed to complete and finish the said drawing or painting called or intended to be called or known as to the satisfaction in all respects of the said C. D. and deliver the same to him, his executors, administrators, or assigns, or his or their order, completely finished and perfected on or before the day of next.

2. The copyright in the said drawing or painting and the sole and exclusive right of copying, engraving, reproducing, and multiplying such drawing or painting, and the design thereof by any means, and of any size whatsoever, shall upon the execution of these presents become and be vested in the said C. D., his executors, administrators, and assigns, and should the said C. D., his executors, administrators, or assigns at any time hereafter during the existence of the said copyright require a more formal assignment, the said A. B. shall duly assign unto the said C. D., his executors, administrators, and assigns the said copyright, and do or cause to be done all such acts and assurances as may be by him or them deemed necessary or advisable for vesting the said copyright in the said C. D., his executors, administrators, and assigns.

3. The said C. D. shall and will on the execution hereof pay or cause to be paid unto the said A. B. the sum of £ , part of the said purchase money, or sum of £ , and shall and will pay or cause to be paid unto the said A. B., his executors, administrators, or assigns the sum of £ by equal payments or instalments of £ to be paid by equal yearly payments on the day of in each year until the whole of the said purchase moneys shall be satisfied, and this without any deduction or abatement on any account whatsoever, the first of such annual instalments to be made on the day of . *And* shall and will also pay or cause to be paid unto the said A. B., his executors, administrators, or assigns, interest on the said sum of £ or the balance of the said purchase money for the time being remaining unpaid at the rate of £ per centum per annum to be computed from the day of next.

4. Any formal assignment which may be required by the said C. D. under the provisions hereinbefore contained shall contain covenants on the part of the said A. B., his heir, executors, and administrators, that he the said A. B. hath good right to assign and assure the said copyright and premises unto the said C. D., his executors, administrators, and assigns free from any charge or incumbrance whatsoever, that the same shall and may during the term specified in the first section of the 25 & 26 Vict. c. 68, be exercised and enjoyed accordingly by the said C. D., his executors, administrators, and assigns without any lawful interruption, or disturbance, and also a covenant for further assurance in the ordinary and usual form.

5. The said A. B. will sign artists' proofs provided the same appear to him to be satisfactory.

6. *The ordinary arbitration clause. In witness, &c.*

APPENDIX (I).

FORMS OF INJUNCTIONS.

Literary Copyright

No. 1.—*Restraining publication of Poems.*

That an injunction be awarded to restrain the defendant, &c., from printing, reprinting, publishing, or exposing to sale any copy or edition of a certain book or poem, entitled "Paradise Lost," composed by John Milton, or of the life of the said John Milton, or of the notes of various authors upon the said poem, compiled by Dr. Thomas Newton, until the hearing of this cause (*a*); and it is further ordered that the plaintiffs do speed their cause.—Eldon, L. C., in *Tonson* v. *Walker*, 3 Swan. 681.

No. 2.—*Topographical Dictionary.*

Let the defendant, his agents, servants, and workmen be restrained from further printing, publishing, selling, or otherwise disposing of any copy or copies of a book called "A New and Comprehensive Gazetteer," containing any article or articles, passages or passage, copied, taken, or colourably altered from a book called "The Topographical Dictionary of England," published by the plaintiffs.—*Lewis* v. *Fullarton*, 2 Beav. 6, 14.

No. 3.—*Order restraining publication of Books, awarding Damages, and directing an Account.*

That the defendants be restrained from printing, publishing, and selling any copies or copy of a third or any subsequent edition of the plaintiff's book called "The Practice of Photography." It was ordered that the defendants deliver to the plaintiff all copies of the third edition of the plaintiff's book in the pleadings mentioned. The defendants offering to pay £25 to the plaintiff in full of all claims for profit upon the sale of the said edition, if the plaintiff accept such offer,—it was ordered that the defendants pay the same accordingly; but if the plaintiff does not accept such offer, then it was ordered that the usual accounts be taken of the gains and profits received by the defendants from the third edition of the plaintiff's book.—Wood, V.-C., in *Delfe* v. *Delamotte*, 3 K. & J. 581.

No. 4.—*Use of Name—Injury to Employer's Property.*

That the defendant be restrained from publishing, issuing, or circulating any such advertisements, circulars, or letters as in the pleadings mentioned, containing any statement or representation that the defendant is interested or concerned in

(*a*) This was the old form: the modern form is "until the judgment in this action or further order." The injunction is, as a matter of course, extended to the defendant's workmen, servants, and agents. Unless the plaintiff's right is perfectly clear, or damage unlikely to accrue, an undertaking in damages from the plaintiff is always required.

any annual, book, or publication, other than "Beeton's Christmas Annual" so published from year to year by the plaintiffs, or that the defendant's connection with the plaintiffs' firm is terminated, or that the use of the defendant's name by the plaintiffs for the purposes of their said "Beeton's Christmas Annual" is improper or unauthorized.—Malins, V.-C., in *Ward* v. *Beeton*, L. R. 19 Eq. 211.

No. 5.—Publication of a Magazine as a continuation of Plaintiff's Magazine.

That the defendants, &c., be restrained from publishing or exposing to sale any copy or copies of the defendant's said work, and from printing, publishing, or exposing to sale any other work or publication as or being a continuation of the plaintiff's work, or of the defendant's work which had been so published as such continuation as aforesaid, and from printing all or any part or parts of the plaintiff's said work; and that the injunction shall be continued as to any letters, &c., admitted by the answer to have been received from correspondents by the defendant, while publishing for the plaintiff.—Lord Eldon, C., in *Hogg* v. *Kirby*, 8 ves. 215.

No. 6.—Publication of Magazine in Breach of Contract.

That the defendant, his servants, agents, and workmen be restrained from carrying on, or conducting "The Temple Bar Magazine," in the plaintiff's bill mentioned but the order to be without prejudice to the publication of the said magazine until the hearing of the cause, so as that the name of the defendant Bentley do not appear on the title-page or any other part of the said publication or in any advertisements of the said publication, and this order to be without prejudice to the right (if any) of the plaintiff to damages or profits in respect of any publication of the said work.—Wood, V.-C., in *Ainsworth* v. *Bentley*, 14 W. R. 632.

No. 7.—Name and Title-page of Song.

That the defendants, &c., be restrained from printing, publishing, selling, exposing for sale, or otherwise disposing of the said song "Minnie Dale," or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiff's said song.—Wood, V.-C., in *Chappell* v. *Sheard*, 2 K. and J. 122.

No. 8.—Injunction against Infringement in a Play of Copyright in a Book.

Let the defendant, &c., be perpetually restrained from printing or otherwise multiplying copies of his play containing any passages copied, taken, or colourably altered from the plaintiff's novel, or tale entitled "Little Lord Fauntleroy," so as to infringe the plaintiff's copyright.—*Warne & Co.* v. *Seebohm*, 39 Ch. D. 82.

Titles.

No. 9.—Name of Newspaper.

That the defendants, their servants, workmen, and agents be restrained from printing, publishing, or continuing to print or publish any newspaper or other periodical paper with or under the name or style of the "Penny Bell's Life and Sporting News"; or with or under any name or style of which the name, style, or words of "Bell's Life" shall form a part, or in any way occur; and from using the said name, style, or title of "Bell's Life" by way of name, style, or title to any newspaper or periodical without the licence or consent of the plaintiff.—Stuart, V.-C. in *Clement* v. *Maddick*, 1 Giff. 101.

No. 10.—Name of Newspaper—Soliciting Customers.

That the defendant, &c., be restrained from printing or publishing, or exposing for sale, or procuring to be printed or sold, the newspaper publication called the

True Britannia," or any other newspaper or publication by way of a continuation or imitation of "The Britannia," and from soliciting custom in the name of the plaintiff's trade and business for "The Britannia" newspaper, and from pledging the plaintiff's credit, and from excluding the plaintiff from the accounts and particulars of the plaintiff's trade and business, and from concealing from the plaintiff the names of the subscribers to, and advertisers in, the plaintiff's newspaper "The Britannia," or any of them, or the amounts of their respective debts, or any particulars relating thereto.—Stuart, V.-C., in *Prowitt* v. *Mortimer*, 2 Jur. (N.S.) 414.

No. 11.—*Name of Newspaper.—Injury to Periodical.*

That the defendant, &c., be restrained from printing, publishing, or selling any newspaper or other periodical under the name of "The Daily London Journal," or under any other name or style of which the words "London Journal" shall form part, and from doing or committing any act or default that may tend to lessen or diminish the sale or circulation of the plaintiff's periodical called, "The London Journal."—Wood, V.-C., in *Ingram* v. *Stiff*, 5 Jur. (N.S.) 917.

Dramatic and Musical Copyright.

No. 12.—*As to an Operatic Magazine.*

Let an injunction be awarded against the defendant to restrain him, his servants, agents, and workmen until, &c., from selling or otherwise disposing of the portion of No. 111 in the "Pianista and Italian Opera Promenade Concert Magazine of Pianoforte and Vocal Music," containing three pianoforte solos from Mendelssohn's original composition of music to Shakespeare's "Midsummer Night's Dream," called respectively the "Scherzo," the "Notturno," and the "Wedding March," and also from reprinting or multiplying any further copies of the said No. 111 of the "Pianista" which shall contain the said pieces, or any of them, and also from printing, publishing, or selling any portion of the said work or composition of music to Shakespeare's "Midsummer Night's Dream," composed and arranged by Felix Mendelssohn-Bartholdy, except the overture thereof.—*Burton* v. *James*, 5 De G. & Sm. 80.

Engravings and Etchings.

No. 13.—*Collection of Etchings.*

That the defendant, W. S., his servants, agents, and workmen, be restrained from exhibiting the gallery or collection of etchings in the bill mentioned, or any of such etchings, and from making or permitting to be made any engravings or copies of the same or any of them; and from publishing the same or any of them, or parting with or disposing of the same or any of them; and from selling or in any manner publishing, and from printing the descriptive catalogue in the plaintiff's bill mentioned.—Knight Bruce, V.-C., in *Prince Albert* v. *Strange*, 2 De G. & Sm. 656.

No. 14.—*Etchings improperly obtained and published; Catalogues improperly published—Decree—Delivery up.*

By the decree it was declared that the plaintiff was entitled to have delivered to him the impressions (by the answer of defendant Judge admitted to be in his possession) of such of the several etchings in the pleadings mentioned, as in the catalogue, and in the pleadings were stated to have been etched by the plaintiff, that is to say [they were described by reference to the numbers in the catalogue]; and it was ordered that Judge should, within four days after the service of the decree, deliver up the impressions above specified on oath, and leave them with the Clerk of Records and Writs, at the Record Office. And it was ordered that the defendant Strange should, within four days after service of the decree, deliver to

the Clerk of Records and Writs, at the said office, the twenty-three copies of the catalogue, being the same as were mentioned in the decree in the other suit of even date. And the decree contained similar directions as to six copies of the catalogue admitted by Judge to be in his possession, and the Clerk of Records and Writs was ordered to destroy these copies of the catalogue, giving notice to the solicitors of the several parties of the time and place at which he intended to do so. And it was ordered that the defendants, their servants, &c., should be restrained from making, or permitting to be made, any engraving or copy of such etchings, or any of them; and from publishing the same; and from parting with, or disposing of them, or any of them, except in obedience to the decree; and from selling or in any manner publishing the catalogue or any work being or purporting to be a catalogue of the etchings made by the plaintiff. Provision made for costs. Liberty to apply reserved.—Knight Bruce, V.-C., in *Prince Albert* v. *Strange*, 2 De G. & Sm. 717.

No. 15.—Illustrated Book.

That the defendants, their agents, and servants be restrained from printing or publishing or selling or exposing for sale or hire, or otherwise disposing of, or causing, procuring, or permitting to be printed, published, sold, exposed for sale or hire, or otherwise disposed of, any further or other copies or copy of a book called "The Comical History and Tragical End of Reynard the Fox," or any other book, work, publication, or thing, containing any passage, article, print, wood-cut, engraving, illustration, matter, or thing taken or copied, or colourably altered from any passage, article, print, wood-cut, engraving, matter, or thing contained in a book of the plaintiff's, entitled "The Comical Creatures from Wiirtemberg, including the story of Reynard the Fox, with twenty illustrations drawn from the stuffed animals contributed by Hermann Ploucquet, of Stuttgart, to the Great Exhibition," wherein copyright subsisted or belonged to the plaintiff.—Parker, V.-C., in *Bogue* v. *Houlston*, 16 Jur. 372.

Designs.

No. 16.—As to Catalogue of Designs.

Let a perpetual injunction be awarded to restrain the defendant, his servants, agents, and printers, from publishing, printing, selling, delivering, or otherwise disposing of the sheet of monumental designs in the bill mentioned, or any other sheet in the compilation of which the plaintiff's book of monumental designs has been used, and from copying or pirating any part of the said book.—*Grace* v. *Newman*, L. R. 19 Eq. 623.

No. 17.—As to Woven Fabrics, and delivery up of Articles.

That the injunction awarded on the day of , against the defendants restraining them and each of them, their workmen, servants, and agents, from selling or disposing of any of the articles of manufacture to which the plaintiffs' design, in the bill mentioned, or a fraudulent imitation thereof, had been applied, as in the said bill mentioned, and from applying the plaintiffs' said design or any fraudulent imitation thereof, to any woven fabrics or articles of manufacture, be continued until after the day of , and that the defendants should forthwith deliver up to the plaintiffs, for the purpose of being destroyed, the drawing or drawings, point paper, and the several cards used in applying the design in the plaintiffs' bill mentioned; and also the articles manufactured by the defendants to which the said plaintiffs' design had been applied, the same to be verified by affidavit, costs to be taxed, and that such costs, when taxed, be paid by the defendants: and on payment thereof, that all further proceedings in this suit should be stayed, unless the defendants committed any breach of the injunction already awarded; and any of the parties were to be at liberty to apply to the Court, as there should be occasion.—Knight Bruce, V.-C., in *MacRae* v. *Holdsworth* 2 De G. & Sm. 499.

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